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THE PEACE PACT OF PARIS

A STUDY OF THE BRIAND-KELLOGG TREATY

By

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THE PEACE PACT OF PARIS

CHAPTER I

INTRODUCTORY

THE Briand-Kellogg Multilateral Treaty for the Renunciation of War was signed at Paris on August 27, 1928; the ceremony of signature took place in the Salon de l'Horloge of the French Foreign Office; the fifteen countries whose plenipotentiaries participated, in the order of their signing, are the following:

Germany, United States of America, Belgium, France, The British Empire (except the Dominions and India), Canada, Australia, New Zealand, South Africa, Irish Free State, India, Italy, Japan, Poland, Czechoslovakia.

The Treaty¹ is written in English and in French, both texts being equally authentic.

The body of the Treaty contains three Articles, the first two of which were taken over with little change in language from the Draft Pact of Perpetual Friendship between the United States and France of June 6, 1927. By Article 1 the Parties renounce war as an instrument of national policy; Article 2 is an agreement for the pacific settlement of international disputes; and in Article 3 are provisions for ratification and for adherence by other Powers. There is a Preamble containing, *inter alia*, a highly important reference to a possible violation of the Treaty. The rest of the document consists of the recital of plenipotentiaries and some other clauses of form. Aside from these last, but including the Preamble, the Treaty is a paper about 500 words long.

On the occasion of the signature of the Treaty, only one

¹ Document 39.

address was made; this was by M. Briand, Minister of Foreign Affairs of France; in an English translation it will be found among the appended documents.¹ M. Briand spoke of the Treaty as a contract which would benefit the League of Nations, offering it "a kind of general reinsurance"; he explained that the essential feature of the Treaty is the renunciation of war "in its most specific and dreaded form—selfish and wilful war"; this form of war, he said, becomes now juridically devoid of legitimacy; "Thus shall war as a means of arbitrary and selfish action no longer be deemed lawful"; he alluded to the fact that sanctions of the Treaty did not exist, except "the moral forces"; he referred to the desired universality of the Treaty; and, finally, to the necessity of organising peace as "the work of tomorrow". In closing, M. Briand proposed the dedication of the Treaty to "all the dead of the World War."

That eloquent speech of M. Briand was, contrary to his custom, read from manuscript; it was worthy of its occasion and its references to the meaning and spirit of the Treaty deserve careful study.

The original Treaty, while signed at Paris, is deposited in the archives of the Department of State; accordingly, it was for the United States to send out invitations to non-Signatory Powers to adhere to the Treaty. Such invitations were extended almost immediately upon the signature of the Treaty by identic Notes² of the same date, August 27, addressed to forty-eight Powers.

The Note of invitation, after referring to the signature of the Treaty and the previous negotiations, explained that the decision to limit the number of original Signatories to fifteen was "based entirely upon practical considerations"; it was pointed out that it had from the beginning been the desire of the United States that every Power should join in the Treaty and further that as the Treaty did not come into force until ratified by all of its fifteen Signatories, the

¹ Document 40.

² Document 41.

early deposit of an instrument of adherence would bring the Treaty into force in respect of an adhering Power at the same time as in respect of the Signatories themselves.

On the same date, at Moscow, the French Ambassador delivered to the Government of the Union of the Soviet Socialist Republics an invitation to adhere to the Treaty. It was the French Government and not that of the United States that extended the invitation to Russia for the reason that diplomatic relations between the two last named countries do not exist.¹

Thus the possible number of Parties to the Treaty is sixty-four. There is no doubt of the ratification of the Treaty by all of its fifteen Signatories, with the possible exception of the United States; the more likely forecast at this writing is that the Treaty will receive the necessary consent of the Senate²; and most of the invited States have already declared their intention to adhere./

At the Ninth Assembly of the League of Nations, September, 1928, the new Treaty was the subject of quite general discussion. Almost all of the speakers expressed warm approval of its provisions³; many of them considered that it would facilitate agreements regarding disarmament proposals; some of them regarded the Treaty as supplemental to the Covenant; a proposal was even made by the Lithuanian Delegation looking toward amendment of the Covenant along the lines of the Treaty for the Renunciation of War. However, no resolution was passed or other action taken by the Assembly as it was thought that any such action pend-

¹ The Russian Note of August 31 (Document 42) stated that the Soviet Government would adhere to the Treaty; and the Russian instrument of adherence, dated at Moscow September 6, has been received at Washington.

² Naturally even this expression of probability is put forward with some hesitation and reserve. Difficulties are to be anticipated in the Senate regarding both the Monroe Doctrine and the British Regional Doctrine.

³ But at the Plenary Session of September 11 the Delegate from Persia said that his Government "would have to explain its point of view in regard to certain reservations which might diminish the efficacy of the pact." The reference was to the British Regional Doctrine mentioned in the Note of Sir Austen Chamberlain of May 19, 1928.

ing the coming into force of the Treaty would be premature.

In view of this general attitude of the governments of the world toward the Briand-Kellogg Treaty, it is a certainty that almost all of them will become Parties to the Treaty if and when it shall come into force.¹

At the earliest the Treaty can hardly come into force before January, 1929; in various countries besides the United States legislative assent is required for ratification or adherence. Most, and perhaps all, of those Parliaments will be in session in the meantime; our own Senate is to meet in December and, given the consent of the Senate and the fulfilment of the necessary formalities by other countries, the coming into force of the Treaty, with perhaps fifty or more Parties thereto *ab initio*, should date some time in the first months of the new year; certainly there will be every effort made at Washington to have the Treaty proclaimed during the present Administration.

The following discussion of the Treaty proceeds upon the assumption that in due course it will come into force as among its Signatories and in respect of most other Powers as well.

¹ Some of the countries of Latin America, however, have thus far maintained an attitude of reserve. The latest information lists six States as those which have not yet indicated acceptance of the Washington invitation: Iceland, Argentina, Brazil, Chile, Ecuador and Paraguay.

CHAPTER II

THE ORIGIN OF THE TREATY

THE Briand-Kellogg Treaty had its origin in the Message of M. Briand addressed to the American people on the tenth anniversary of the entrance of the United States into the World War, April 6, 1927. A portion of that noteworthy and remarkable message read as follows:¹

If there were need of it between the two great democracies in order to give high testimony of their desire for peace and to furnish a solemn example to other peoples, France would be willing to enter into an engagement with America mutually outlawing war, to use your way of expressing it.

The renunciation of war as an instrument of national policy is a conception already familiar to the signatories of the League Covenant and the Locarno Treaties. Any engagement subscribed to in the same spirit by the United States toward another nation, such as France, should greatly contribute in the eyes of the world to enlarge and fortify the foundation on which the international policy of peace is being erected. Thus the two great friendly nations, equally devoted to the cause of peace, would furnish the world the best illustration of the truth that the condition immediately to be obtained is not disarmament but the practice of peace.

The inspiration of this message was undoubtedly a talk which M. Briand had with Professor James T. Shotwell a fortnight earlier.² Shotwell even formulated the idea of renunciation of war as an instrument of national policy and, following the suggestion, Briand framed his message.

¹ Extracted from *The New York Times* of April 6, 1927. The French original of the Message and a translation are Document 1.

² On March 22.

The message contained an offer by the Government of France made by her Foreign Minister publicly to the people of the United States to conclude a treaty of the utmost consequence to the two countries. If the offer of such a treaty or indeed of any treaty had been so made by France to any country other than the United States it would there have immediately attracted the widest public attention. The importance and significance of the public proposal by the French Government would have been instinctively, and one might say automatically, recognised by every one.

Extraordinary and impossible as it may now seem, the press of America almost universally missed the point; it is not too much to say that for some weeks after the Briand message it was hardly discovered by the American press generally; the diplomacy was too "open"; with mystery and intrigue lacking, it aroused no attention.

M. Briand must have felt disappointed at the result or rather lack of result of his *démarche*; America was incomprehensible again.

At the time, the Department of State seemingly paid no attention to the message of M. Briand. Since there was no communication to the Department, but merely a statement by the Foreign Minister of France addressed to the American people, those in authority at Washington appeared to consider the Briand message simply as an expression of friendship.

It was only when certain American citizens, notably Dr. Nicholas Murray Butler, commenced a public discussion of the Briand proposal that the American press and the American public awoke to the significance of the French offer.

This public discussion began with a letter of Dr. Butler which appeared in The New York Times of April 25; following this, comment was widespread in the Press of the country generally; various individuals and societies began to draft agreements intended to carry out the Briand suggestion; indeed, once the discussion got well under way, support of the anti-war idea was so general in the United States as to be justly regarded, both here and abroad, as an im-

pressive evidence of one phase of American public opinion; the popular urge was far ahead of official action, for there had been no action at Washington at all.

Public debate as to an international agreement in the absence of any governmental negotiations was enough of a novelty to shock any Foreign Office; indeed any such movement, if it went so far as to get behind a particular form of words instead of an idea, might create very real difficulties; it seems that M. Briand, impressed by the turn of events here, made some inquiry as to whether the Department of State did or did not want a treaty, with the suggestion that if it did, whether it was not for the two Governments concerned to draw up the paper rather than others. A few days later,¹ Washington said:

In response to an informal inquiry made on June second by M. Briand, Foreign Minister of France, through Mr. Herrick, the American Ambassador, the latter has been authorized to say to M. Briand that the United States will be pleased to engage in diplomatic conversations on the subject of a possible agreement along the lines indicated by M. Briand's statement to the press on April sixth last.

So the "conversations" then started with the Draft Pact of Perpetual Friendship between France and the United States of June 20.

The Briand-Kellogg Treaty has indeed a unique origin. An anniversary message of friendship and offer of a Treaty addressed by a Foreign Minister of one great country to the people of another, followed by official and press silence, brought into its own by the initiative of private individuals and then supported by such a wave of public opinion as to constrain diplomatic negotiations!

¹ Press notice of the Department of State, June 11, 1927.

CHAPTER III

THE PACT OF PERPETUAL FRIENDSHIP

ON June 20, 1927, the Department of State received from M. Briand, Foreign Minister of France, a "Draft Pact of Perpetual Friendship between France and the United States". This paper was transmitted "informally" through the American Ambassador at Paris. It seems that it was unaccompanied by any written comment or discussion. The Draft was written in French¹ although it contemplated an English original as well.²

The Draft was quite simple. Aside from a preamble, referring appropriately to the relations between the peoples of the two countries, and the necessary clauses of form, it contained only two Articles of one sentence each as follows:

Article 1. The high contracting powers³ solemnly declare, in the name of the French people and the people of the United States of America, that they condemn recourse to war and (that they)⁴ renounce it respectively as an instrument of their national policy towards each other.

Article 2. The settlement or the solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise between France and the United States of America, shall never be sought by either side except by pacific means.

¹ For the text in French and in English, see Document 2.

² The translation of the Draft as printed by the Department of State is used here in the discussion. While its English is in some respects open to criticism, it is generally the equivalent of the French.

³ The French is "Parties."

⁴ These words are not in the translation of the Department of State and I insert them to make clear the meaning of the French. For a discussion of the different phrasing of the final Treaty text, see p. 55.

The brevity of these two Articles which are the substance of M. Briand's Draft is very appealing in itself and also and more particularly from the point of view of public discussion. The simplicity of the language had a great influence on the subsequent negotiations; and indeed the wording proposed by M. Briand appears with very little change as the two substantive Articles of the Briand-Kellogg Treaty.

However, between the Briand proposal of June 20, 1927, and the Briand-Kellogg multilateral Treaty of August 27, 1928, there is a period of important diplomatic history and negotiations among all the Great Powers (except Russia) and some others also. It is historically accurate to say that the Briand-Kellogg multilateral Treaty was elaborated from the Briand proposal of June, 1927; the latter was the basis of the former; its very wording became largely the wording of the final Treaty; but the similarity in form of the two papers is only a partial similarity of essence.

The names of the two documents show this as strikingly as would extended discussion. M. Briand called his Draft a "Pact of Perpetual Friendship" between the two countries. While the Draft said that France and the United States declared that they renounce war "as an instrument of their national policy towards each other" and that the settlement of all disputes between them should be sought only by pacific means, this was not thought of as changing the policies of the two countries but rather as a solemn statement of them in writing, and to some extent as a gesture, perhaps an example for other Powers great and small. Indeed the Preamble referred to the fact that the Pact was between "two nations that no war has ever divided". In its essence M. Briand's Draft was what he called it, a "Pact of Perpetual Friendship".

On the other hand, the Briand-Kellogg Treaty is in its essence a Multilateral Treaty for the Renunciation of War, which is what the Department of State calls it.¹ While the

¹ The latest official pamphlet is entitled *The General Pact for the Renunciation of War*.

original language of the Pact of Friendship in substance remains, the international realities involved in its acceptance by most of the Powers of the world in a multilateral Treaty instead of merely by France and the United States *inter se*, have made the later document one inherently different in its political nature; it is this political difference that we instinctively and very properly recognise by thinking of M. Briand's Draft as a Pact of Friendship and of the Briand-Kellogg Treaty as a Treaty for the Renunciation of War.

CHAPTER IV

THE AMERICAN OFFER

THE Department of State took a little over six months to consider the French Draft. The answer to be made to the proposal was undoubtedly a subject of deep concern to the Administration at Washington.¹ Any answer to be made to M. Briand by Mr. Kellogg, as Secretary of State of the United States, and particularly the answer that was made, had a direct bearing on the differences of view as to our foreign policy that existed within the United States and even within the Republican Party. It is true that that Party had been continuously in control since 1921 of the Government and of the foreign policy of the United States; but it was also true that that policy, despite all protestations to the contrary, had been, during the last six or seven years, gradually shifting in its attitude toward the rest of the world generally and toward Europe in particular.

The United States had taken a real part in the Reparations settlement and had even officially though indirectly assented to the London Agreements which put the Dawes Plan in operation. Courteous consideration of the League of Nations had replaced the early Harding days of rude contempt. Our participation in Geneva conferences had steadily increased and had extended even to matters of grave import, such as Disarmament. We had offered, though with some reserve, to join the World Court. In-

¹ No one who reads the Press of the period can fail to appreciate that American opinion must have had a real influence on the decision of the Department of State; but I omit any review of the course of public sentiment, for while that sentiment was behind *some* action by the Administration, it was not behind any particular form of action; the negotiations had commenced and from this point my study is limited to them and their outcome.

deed American membership in the League of Nations was being talked of merely as a thing that had been voted on and not as something inherently undesirable.

Despite the oceans of ink that had been poured out in the United States about peace plans, the discussions had never really gotten away from the League of Nations, for the League or against it, or for American participation in the League or against it, or latterly for the League but against American membership. No other intelligent scheme had emerged from all the writing and the talking; and the official attitude of the United States had been an entirely negative one in theory if not in practice.

Here, however, was a definite proposal made to the United States by one of the great Powers of the world, a country with whom we had been on most friendly relations for over a century and for whom we had a sentimental friendship dating back to Lafayette. Moreover, there is no part of the world in which French interests and American interests are conflicting; the essentials of the one country are largely matters of indifference to the other. The war debt may be irritating but hardly more, and in any case is a temporary issue. Between no two nations could there seem to be less chance of a serious conflict of view and certainly it is no exaggeration to say that between no two Great Powers could war seem more impossible.

While such friendly relations and such non-competitive interests might be urged and indeed were urged as minimising the necessity of an agreement of peace between France and the United States, there were other considerations which rightly had greater weight in the balance. Such a treaty between two Great Powers would be a very striking thing; it might point the way to other such treaties containing, as it did, no hint of an alliance; and if such treaties were to be made it was natural enough that the easiest of them to make should come first.

Furthermore, France is the greatest military power in Europe and one of the very leading Members of the League of Nations. The whole of French foreign policy at the

present time is centred around the maintenance of the League of Nations system. Now certainly friction between the United States and the League in the event of the application of the sanctions of the Covenant is not an impossibility. The proposal of the Geneva Protocol in 1924 brought that possibility into sharper discussion, particularly in Great Britain, than previously; but it had always existed and still exists. If France, a leading member of the League of Nations, made with the United States, the leading non-Member, such a treaty as M. Briand proposed, at least the soothing influence of such an agreement would be available if needed.

The Briand proposal came at an opportune time. Our arbitration treaties with France and Great Britain were about to expire. The limitations of their text made them of comparatively little real practical importance; but it was necessary to renew them in a somewhat revised form. Furthermore, as critics were beginning to point out, the Bryan Treaties of 1913-1914 had been permitted by the Department of State to become practically obsolescent; steps were being taken to revive their actuality. It may indeed be mentioned here, so careless was the drafting of the new arbitration Treaty with France by the Washington officials, that its text left it doubtful whether the Bryan Treaty with the French Republic was not superseded; the blunder in this regard was corrected by an exchange of Notes.

Most important, however, was the fact that for seven years after 1920 no constructive proposal had been made by the United States regarding world politics generally.¹ The hysterical acclaim that had greeted the Naval Agreement of 1921-22 had given place to a rather general feeling

¹ The speech of Mr. Kellogg made at New York on March 15 before the Council on Foreign Relations is entitled "The War-Prevention Policy of the United States." In his opening sentence Mr. Kellogg referred to the object of the negotiations as being "the promotion of the great ideal of world peace." The policy of the United States had turned toward that ideal for the first time since the refusal of membership in the League of Nations.

that the Conference had been badly planned and that its result was unsatisfactory. The disarmament negotiations of the summer of 1927 had broken down with little credit to anybody concerned; and it was common knowledge, a cynic might add, that there was to be a Presidential election in 1928.

Looking back at the surrounding circumstances, it may now seem that the answer of Washington to Paris in Mr. Kellogg's Note¹ of December 28, 1927, was an obvious one; but such a comment would be by itself as banal as most other hind-sight. The answer of Washington was both intelligent and clever; the decision was to seek to extend the French proposal; this seems logical enough now; the policy of the United States in general recently has been to make treaties of similar form with all countries, arbitration treaties, "Bryan" treaties, commercial treaties and so on; so acceptance of a Pact of Perpetual Friendship with France alone, without more, presented certain difficulties.² Clearly if the United States agreed to such a treaty with France, it could hardly refuse to make a similar treaty with the British or Japanese or almost any other country. So far as we were concerned, the French treaty must involve other treaties, so why should not the French treaty with the United States involve also other French treaties, at least with other Great Powers? So the answer of the United States proposed that a treaty "following the lines suggested by M. Briand" should be concluded "among the principal powers of the world," meaning here all the Great Powers excepting Russia; and the subsequent signature of such a treaty by "all the other nations of the world" was suggested as possible and desirable.

I repeat that this may now seem a natural and logical answer to the French proposal for a Pact between France and the United States; but it was none the less an answer

¹ Document 3.

² But the view advanced in some quarters that such a treaty with France would have been in the nature of a "defensive alliance" is wholly untenable and mistaken.

then requiring in high degree both imagination and ability for its conception.

Accordingly, Mr. Kellogg in the Note of December 28 proposed that France and the United States should join "in an effort to obtain the adherence of the principal Powers of the world to a declaration renouncing war as an instrument of national policy". It was added that such a declaration would not only "be an impressive example to the other Nations", but might conceivably lead them "to subscribe in their turn to the same instrument."

Thus Mr. Kellogg visualised first of all an agreement of all the Great Powers (excepting Russia) and also the later development of the Treaty into a world-wide agreement. The political significance of such a proposal was enormous; it had again put the United States in the position of making a definite proposal looking toward world peace; it tended to satisfy critics of the attitude of the United States toward the League of Nations; and it seemed that it would be sufficiently satisfactory to those who had been advocates of various crude proposals for "outlawry of war." Indeed as this expression had come popularly to mean the prevention or the ending of war, the Kellogg proposal was one calculated to respond to the sentiment in favor of that idea as well as to be hailed by the vocal advocates of "outlawry of war" as something of their own, which it was not, either in form or in substance.

Internationally, the Kellogg proposal was bound to occupy a very wide field of discussion. Whether so considered or not, it was really an offer to the League of Nations for a new treaty to include the United States. No Great Power, and perhaps least of all France, could consider such a proposal without thinking of the entire international treaty system now existing, including particularly the Covenant of the League of Nations and the Treaties of Locarno; even relations with Russia and questions of the Far East were within this field of thought.

If so much can be said of the gist of the Note of December 28, little can be said of its argument.

There was some laudation of the United States as welcoming "every opportunity for joining with the other Governments of the world in condemning war and pledging anew its faith in arbitration". This self praise, to which hardly any student of recent American history would assent, was followed by analogous language regarding the limited form of arbitration treaty which the United States was at that time proposing to the French Government and has since proposed to others. The following argument was to the effect that the proposal of Mr. Kellogg had occurred to him "in view of the traditional friendship between France and the United States" and also "in view of the common desire of the two nations never to resort to arms in the settlement" of their controversies, as recorded in the draft arbitration treaty proposed by Mr. Kellogg, although it was also said that the friendship between the two countries "happily is not dependent upon the existence of any formal engagement".

Just why the traditional friendship between the two countries, not depending upon any formal writing, should lead to a multilateral treaty with the Great Powers and others for the renunciation of war was not explained. Perhaps the writer of the phrase had in mind a subtle and undisclosed comparison of this traditional friendship with other traditional enmities.

Undoubtedly the Quai d'Orsay had not visualised such an answer as that of Mr. Kellogg and undoubtedly M. Briand would have written his Draft Pact of Perpetual Friendship a little differently if he had known or had guessed what was coming. Indeed, the Washington Note was regarded at the time, though without warrant, I think, as being an attempt to raise some difficulties with the French, which it undoubtedly did.

However, if Paris had not foreseen the answer of Washington, neither had Washington visualised the attitude of Paris. Despite the cleverness of Mr. Kellogg's Note, the Washington authorities seem not fully to have appreciated that a multilateral treaty, even if embracing only six Great

Powers, was a great deal more than five separate treaties between the United States and each one of these Powers. Such a treaty is not only a treaty of the United States with each of the others, but it is also a treaty between the British and the French, for example, and one between the French and the Italians and so on. Looking at it mathematically, the multilateral treaty of six Powers is fifteen treaties and then beyond that it is something more. If there were fifteen such treaties a breach of one of them would be of no concern except to the two Signatories; but if all the agreements are combined in one multilateral document, a violation of the bargain between France and Italy, for example, is a violation of the treaty with the other four Great Powers as well.

Looking at the matter politically, a treaty between France and the United States for the mutual renunciation of war as an instrument of national policy did not bring into question, except in theory, the treaty obligations of France with the rest of Europe; but such a treaty in multilateral form among the six Great Powers involved, of necessity, consideration of the whole *nexus* of their world-wide obligations, including particularly the Covenant of the League of Nations, of which all of them except the United States were Members, and the Treaties of Locarno, to which all of them except the United States and Japan were Parties.

CHAPTER V

THE FRENCH NOTE OF JANUARY 5, 1928

THE correspondence which had now been commenced between the two Governments was destined to continue over some three months, during which time five more Notes were written.

The first in order of these was the French Note¹ of January 5, 1928, signed by the French Ambassador at Washington. As a State Paper, this Note is properly open to serious criticism. It was not well framed and seems to have been written without much thought of American official or American popular sentiment.

The Note was quite brief. In customary diplomatic form the first half of it was taken up by a résumé of the previous Note of Mr. Kellogg; then the French Government rather summarily proposed a change in the procedure suggested by Mr. Kellogg. While acceding in principle to the idea of a multilateral treaty the French proposed that the treaty should be signed in the first instance by the two countries, France and the United States, and that it should then be left open for the adherence "of all States".

It is very difficult to see any reason for this French proposal. If a multilateral treaty were to come into force, it was certainly in the interest of France that the discussions regarding its terms should be participated in at least by the other Great Powers. Indeed it was the French Government itself which later proposed that the treaty "will have no binding force until it has been generally accepted".

Following this, the French Note proposed, without comment or explanation, a substantive change in the phrase-

¹ Document 4.

ology put forward by Mr. Kellogg. It is to be recalled here that the wording proposed by Mr. Kellogg for a multilateral treaty was the wording of the Draft Pact of Perpetual Friendship of M. Briand. This wording was, as paraphrased in Mr. Kellogg's Note: "condemning war and renouncing it as an instrument of national policy in favor of pacific settlement of international disputes". The French proposed to change this by saying that, under the terms of the Treaty, the Parties "shall renounce all war of aggression and shall declare that for the settlement of differences of whatever nature which may arise between them they will employ all pacific means".¹ The essential change here is the introduction of the expression "war of aggression".

Now, passing for the moment any question as to possible differences in meaning between "renunciation of war as an instrument of national policy" and renunciation of "all war of aggression", something is to be said as to the French way of putting their ideas forward; certainly it was deplorably inept. The French flair for diplomacy was lacking at this juncture. That the French appreciated the realities of the situation at this time is not to be doubted; but the French Government failed to take advantage of its opportunity to allude to them. In proposing a change in what was primarily a French Draft there was not a word of explanation or comment²; no mention whatever was made of the essential political difference between a multilateral treaty as suggested by Mr. Kellogg and the Pact of Friendship suggested by M. Briand; nothing was said of the League of Nations or of the Treaties of Locarno, all of which subjects were to be elaborately treated by the French

¹ The French is "interdiraient toute guerre d'agression et déclareraient que pour le règlement des conflits de quelque nature qu'ils soient qui viendraient à s'élever entre elles, elles emploieront tous les moyens pacifiques."

² It was stated in *The New York Times* of January 10 that on the previous day instructions had been sent to the French Ambassador to make explanations to the Department of State; but the French Note, which was dated only eight days after the American Note which it answered, might better have been written a little later, with its reasons in its text.

Government in subsequent Notes; indeed, the later French Notes themselves are the most severe criticism of the inadequacy of the French Note of January 5.

Certainly at the time and even later, there was a very important body of French opinion which did not at all favor a multilateral treaty of the nature proposed by Mr. Kellogg. During November and December, 1927, the idea of some extension of the original Briand proposal, either by other similar treaties or by a multilateral treaty, had been talked about in Washington and mentioned in the press. Just as the difficulties in the way of making such a treaty with one and only one country were apparent to us, so did the difficulties in the way of a general treaty seem obvious to the French. So far as the terms of a treaty with the United States alone were concerned, M. Briand had a perfectly free hand; no theoretical or legal objections could weigh at all; indeed in the French view the language of such an agreement with America could hardly have been too sweeping; but with all Europe included, the French attitude was automatically different and more cautious; an election in France was only a few months away; and in the light of the history of the Treaty of Versailles and of the League of Nations, scepticism as to the new American offer and criticism of it were very natural.

Under these circumstances the substance of the French Note of January 5 went perhaps as far as M. Briand could have been expected at the time to go; for he accepted the principle of a multilateral treaty though proposing a change in procedure and a substantive change in wording.

The form of the French Note, however, its lack of argument or explanation, was perhaps due to the failure of the Quai d'Orsay to appreciate the publicity which was to attend the negotiations;¹ in a discussion merely between

¹ On February 2, M. Briand said in the course of a debate in the French Senate: "Do you wish me to tell you what has rendered the undertaking difficult? It is that it has been conducted publicly. Obviously today one ought not to keep diplomatic negotiations secret, but they are not facilitated by an atmosphere of polemics or manifestations of impatience."

Foreign Offices, whether the reasons for a proposal are expressed in the Note that contains it or are made later on by an Ambassador, makes little difference; but when the proposal is to be printed in the newspapers and not the reasoning, there is a very great difference; and open diplomacy was to prove one of Mr. Kellogg's most effective weapons; everything that was to be written to or by Washington was given out as the discussions proceeded with occasional speeches and statements to the press in addition; to such a method of procedure, the French Note was not well adapted.

In spite of that, whatever the cost, and whenever one can, one ought to inform the peoples of such negotiations because, being the most deeply interested in the solutions, they ought not to find themselves face to face with an accomplished fact. They ought to have the opportunity to make their opinion known, to make their voice heard."

CHAPTER VI

THE AMERICAN NOTE OF JANUARY 11, 1928

THE rather summary form of the French Note of January 5, left it open to a very effective reply by the Secretary of State. Mr. Kellogg's response¹ was dated January 11 and the omission of any discussion² by the French Government in its communication made it easy for Mr. Kellogg to meet the two points of the French Note.

After expressing his gratitude that the French Government was willing to accept "in principle" the proposal of a multilateral treaty in lieu of "the bilateral pact originally suggested by M. Briand", Mr. Kellogg first took up the French suggestions that such a treaty should "be signed in the first instance by France and the United States alone and then submitted to the other Powers for their acceptance". The objections to such a procedure were forcibly stated; it was said that the form of a treaty which might be acceptable to France and the United States would not necessarily be approved by other Great Powers; it seemed reasonable to suppose that the views of other Governments might "be accommodated through informal preliminary discussions" resulting in a text satisfactory to all Parties; and in this connection Mr. Kellogg mentioned that the original draft of M. Briand might be made the basis of

¹ Document 5.

² The French seemed to think that their explanations of their Note of January 5 (which were transmitted on January 9 or 10 for communication by the French Ambassador at Washington) had not been received at the Department of State when the American Note of January 11 was written. See Note 2, p. 21, *supra*, and *The New York Times* of January 13. It may be assumed that the French explanations were repeated and perhaps elaborated in the French Note of January 21.

such discussions. Thus the rather unfortunate French suggestion was disposed of. It was not again pressed.

The substantive change proposed by the French in the text of the Treaty was next discussed. Here Mr. Kellogg contented himself with pointing out that the original French proposal, which he quoted, "provided unequivocally for the renunciation by the high contracting parties of all war as an instrument of national policy." Now the French Government, he said, "apparently contemplates that the scope of such a treaty should be limited to wars of aggression". Then, alluding to the absence of any discussion or argument in the French Note, Mr. Kellogg mentioned that he was "not informed of the reasons" which had led the French Government to modify its own proposal, but he hoped that the change was of "no particular significance" and especially that it did not mean that the French Government would be unable to join with the United States in proposing the "original formula" of M. Briand as "the subject of preliminary discussions with the other great powers".

Now if diplomatic correspondence were to be thought of as a sort of debate in which success lay with the side that outpointed the other, this rejoinder of Mr. Kellogg was complete. The difficulty with the American Note, however, was that, like the previous French Note, it said nothing at all of the existing political realities. Doubtless there was no reason why Mr. Kellogg should raise the international situation generally as the French had seen fit to be silent about it; but the idea that a general world treaty for the renunciation of war (in any form of language whatever) could be considered without taking into consideration the League of Nations and the existing treaty system in Europe is of course impossible; and of course those who were writing these communications were thinking of all the factors mentioned and of others; and everybody knew that they were.

The proposal of Mr. Kellogg was being discussed in governmental circles and in the Press throughout the world; columns were being written as to the effect which such a

treaty might have upon the League of Nations and upon the relations of the Locarno Powers and so on. It was only the diplomatic correspondence up to this point that omitted to mention most important elements in the negotiations, to which indeed later were to be devoted pages of discussion.

In conclusion, Mr. Kellogg in his Note suggested that the two Governments join in "a communication to the British, German, Italian and Japanese Governments transmitting the text" of the original proposal of M Briand and copies of the subsequent correspondence for the "consideration and comment" of the other Powers.

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CHAPTER VII

THE FRENCH NOTE OF JANUARY 21, 1928

HOWEVER, the American Note of January 11 was the end of any verbal fencing between the two Governments. Discussion in the light of reality commenced¹ in the following French Note² of January 21; this explained at some length the position of France.

After some opening expressions of *politesse*, the French Note referred to the original French proposal of June, 1927, as appearing to the French Government "to be both desirable and feasible by reason of the historical relations between the two countries."

Then follows a paragraph of the Note which is worth quoting in full:

The American Government was only willing, however, to embody the declaration proposed by the French Government in the preamble of the Franco-American arbitration convention now in process of renewal, and considered on the other hand, for reasons of its own which the French Government has not failed to take into account, that it would be opportune to broaden this manifestation against war and to make it the subject of a separate act in which the other powers would be invited to participate.

The statements here are both interesting and obscure. It would seem that the negotiations, at least in the French thought, had been somewhat connected with negotiations going on between the two Governments regarding the Franco-American Arbitration Treaty. In this, says the French

¹ See, however, Note 2, p. 24, *supra*.

² Document 6.

Note, the United States was "only willing . . . to embody the declaration proposed" by France "in the preamble."

Now if we look at the revised Arbitration Treaty between the two countries which was signed at Washington on February 6, 1928, we find in its Preamble the following:

Eager by their example not only to demonstrate their condemnation of war as an instrument of national policy in their mutual relations, but also to hasten the time when the perfection of international arrangements for the pacific settlement of international disputes shall have eliminated forever the possibility of war among any of the Powers of the world;

The correspondence between France and the United States preceding the signing of this Arbitration Treaty has not been published. However, it appears from the American Note of December 28, 1927, that the Government of the United States had on that date proposed a draft form of arbitration treaty with France, transmitted with a covering note.

Now the above quotation from the Preamble of the Franco-American Arbitration Treaty is in essence and even to some extent in language the Briand proposal of June, 1927; but it is only in the Preamble, as a recital. It is not an agreement in any strict sense but at most an agreement as to a state of mind, which the French would call a "*venu*". Seemingly the French Government had desired or perhaps had suggested that the equivalent of this portion of the Preamble of the revised Arbitration Treaty be written as one of its substantive clauses so that it would have been a part of the agreement between the two countries; but this could not have been acceptable to the Government of the United States in view of its proposal for a multilateral treaty.¹

¹ There is a paragraph of Mr. Kellogg's speech of March 15, 1928, before the Council on Foreign Relations which has a bearing here. See Document 43 at pp. 269, 270.

The French Note then referred to the previous French suggestion that the proposed Treaty should be "signed in the first place by France and the United States" and then offered to the other Powers for their acceptance as "essentially one of procedure". In effect the French now withdrew the suggestion, saying that France "is ready to concur in any method which may appear to be most practicable".

Then followed mention of "a situation of fact" to which France drew the "particular attention" of Mr. Kellogg. The striking paragraph with which the discussion opens follows:

The American Government cannot be unaware of the fact that a great majority of the powers of the world, and among them most of the principal powers, are making the organization and strengthening of peace the object of common efforts carried on within the framework of the League of Nations. They are already bound to one another by a Covenant placing them under reciprocal obligations, as well as by agreements such as those signed at Locarno in October, 1925, or by international conventions relative to guaranties of neutrality, all of which engagements impose upon them duties which they cannot contravene.

The French Government then refers to the Resolution for the condemnation of war passed by the Eighth Assembly of the League of Nations on September 24, 1927. This Resolution, it said, specifies "that the action to be condemned as an international crime is aggressive war and that all peaceful means must be employed for the settlement of differences, of any nature whatsoever, which might arise between the several states".

The Resolution to which the French Government here referred had been the subject of much consideration prior to its unanimous adoption by the Eighth Assembly. It read as follows:

The Assembly,
Recognising the solidarity which unites the community
of nations;

Being inspired by a firm desire for the maintenance of general peace;

Being convinced that a war of aggression can never serve as a means of settling international disputes and is, in consequence, an international crime;

Considering that a solemn renunciation of all wars of aggression would tend to create an atmosphere of general confidence calculated to facilitate the progress of the work undertaken with a view to disarmament:

Declares:

(1) That all wars of aggression are, and shall always be prohibited.

(2) That every pacific means must be employed to settle disputes, of every description, which may arise between States.

The Assembly declares that the States Members of the League are under an obligation to conform to these principles.

Now it is to be noted that this Resolution is some three months later in date than the original French proposal. More important, however, and much more striking, is the fact that its language was the basis of the modification which the French had proposed for the text of the multilateral treaty in their Note of January 5; even more extraordinary perhaps is the circumstance that in that Note no reference had been made to it as the basis of the French suggestion.

Then in this almost blunt paragraph the position is summed up:

This is a condition of affairs which the United States, while a stranger thereto, cannot decline to take into consideration, just as must any other State called upon to take part in the negotiation.

The French Note went on to say that the original Briand proposal "had been drawn up in the light of the century-old relations between France and the United States" and that *vis-à-vis* the American Government France stood "ready to negotiate . . . on the same conditions"; her at-

titude was unaltered. But in respect of a multipartite covenant, France had to take into consideration the relations existing among the various Powers which would be called upon to participate; this France had done in order to ensure the success of the Treaty contemplated by the United States; accordingly, her suggestions of January 5 as to the terms of the Treaty had been "inspired by the formula which had already gained the adherence of all of the States Members of the League of Nations and which for that very reason might be accepted by them with regard to the United States, just as it had already been accepted among themselves."

Such, said the Note, "is the explanation of our proposal of January 5."

In conclusion, the French Government stated that it had "always" and "under all circumstances" and "without mental reservation declared its readiness to join in any declaration tending to denounce war as a crime and to set up international sanctions susceptible of preventing or repressing it." As to this, it was said, the attitude of the French Government was unaltered and accordingly that Government sincerely desired "to respond to the idea of" the United States and "to second its efforts to the full extent compatible with the situation of fact created by its international obligations." The French Government considered that the formula of January 5 "does indeed seem to be the most apt at this time to assure the accomplishment of the American project." Accordingly it was hoped that the American Government would share this view.

However, the door to further discussions was by no means closed, for the French said that "subject to these observations" they "would very gladly welcome any suggestions" from the United States "which would make it possible to reconcile an absolute condemnation of war with the engagements and obligations assumed by the several nations and the legitimate concern for their respective security."

This French Note of January 21, which I have quoted from and paraphrased at some length, must be regarded as

a strong and logical statement of the French position. Drawing attention, as it did, to a situation of fact, France pointed out that even the United States must take cognisance of such a situation; any multipartite treaty must also take cognisance thereof, as most of the Powers of the world whose participation in the proposed treaty was contemplated, except the United States, were bound by the obligations of the Covenant, and some of them also by other Treaties, such as those of Locarno; moreover, many of those Powers had joined in a Resolution against war only a few months previously; so it was the formula of that Resolution which France suggested as most desirable and most acceptable for general adherence.

All of this was very well said; but it would have been better if it had been said earlier.

CHAPTER VIII

THE AMERICAN NOTE OF FEBRUARY 27, 1928

THE French Note just mentioned was one meriting serious consideration and Mr. Kellogg took over a month before he replied to it on February 27.

He began his communication¹ by remarking, very properly, that the discussions had reached a point where it would seem necessary "to examine the problem from a practical point of view." Indeed that sort of an examination might well have been thought of previously.

The French position was stated as being the doubt of that Government whether as a Member of the League of Nations and as a party to the Locarno Treaties and others France could "agree with the . . . principal world powers not to resort to war in their mutual relations, without *ipso facto* violating her present obligations under those treaties."

Now this is hardly a fair statement of the French position as previously outlined. In the first place, the agreement proposed was not an agreement "not to resort to war in their mutual relations." What was proposed was that the Parties should renounce war as an instrument of national policy.

Moreover, in the Treaties of Locarno there are definite guaranties which create an obligation to use force against any Party that violates its agreement; and certainly the expression "renounce war as an instrument of national policy" is not so definite and precise as to render it beyond argument that it included such action as that which might be deemed necessary under the Locarno Treaties. Indeed

¹ Document 7

Mr. Kellogg himself always avoided any definition of the expression, although later on he was obliged to make most elaborate explanations as to what it did *not* include.

Furthermore, France was a party to the Locarno Treaties and the United States was not. Supposing that both Governments thought and agreed that renouncing war as an instrument of national policy left the Locarno Treaties intact, such a view did not bind the other Parties to those Treaties. It might at least be *claimed* that the new agreement limited action under the old; and whether the claim proved to be well founded or not, France certainly could not afford to have any shadow of doubt cast upon a treaty which she regards as vital as the United States does the Monroe Doctrine.

Mr. Kellogg, however, while referring generally to the treaty obligations of France, confined his particular discussion to the Covenant itself. His first point was that if France could, consistently with her other obligations, as she had offered, conclude the Pact of Perpetual Friendship with the United States which M. Briand had proposed in the previous June, France could also conclude an equivalent multilateral treaty with the other principal Powers. Mr. Kellogg stated that the difference between the two seemed to him to be "one of degree and not of substance"; he thought that a Government free to conclude such a bilateral treaty should be no less free to become party to an identical multilateral treaty since it could hardly be supposed that Members of the League of Nations were in a position "to do separately something they cannot do together."

This is a perfectly good lawyer's argument; but it is the sort of argument that is better adapted to a question arising on pleadings than to international affairs; the validity or effect of international agreements is not to be determined by any such verbal niceties. Would any one say, for example, that an alliance between Norway and Sweden was the same thing as an alliance between Germany and Russia, even if the papers were written in identic terms? Would any one say that two such treaties of alliance were to be

thought of similarly in their relationship to a world treaty? It was equally idle for Mr. Kellogg to suggest that a pact of friendship between France and the United States had, of necessity, the same legal aspect as a general treaty in the same words including, among other Great Powers, France, Germany and Italy.

Mr. Kellogg then went on to suggest that the Covenant did not stand in the way of his proposal. He referred to a Resolution adopted at the Havana Conference of the same month which expressed unqualified condemnation of war as an instrument of national policy and pointed out that seventeen of the twenty-one States represented at that Conference were Members of the League of Nations. Accordingly, he hoped that no Member of the League of Nations would decide that such a renunciation of war as that proposed either violated, "the specific obligations of the Covenant" or conflicted "with the fundamental idea and purpose of the League"; for on the contrary, it would be reasonable to conclude that such an engagement "would be a most effective instrument for promoting the great ideal of peace which the League itself had so closely at heart"; and he spoke of his proposal as one looking to "a common effort to abolish the institution of war".

In this argument, most of which was on a high plane, Mr. Kellogg took a safe and sound position. I do not think that any thoughtful student of the Covenant as a whole will say that there is anything in it which limits its Members from making agreements not to resort to war as an instrument of national policy. Furthermore, I do not think that any one would conclude that such an agreement limited the effect of the obligations of the Covenant contained in Articles 10 and 16. Inferentially at least, this is the position that Mr. Kellogg took. While he did not refer to the text of the Covenant in detail, he did mention its "specific obligations" of the terms of which he was of course perfectly well aware. Certainly he had in mind, at least generally, the years of discussion of Articles 10 and 16 among the Members of the League; and clearly, I think, he did not consider that the

carrying out of these obligations, even by resort to force, would be inconsistent with renunciation of war as an instrument of national policy. I may point out here that, by the Treaty of November 18, 1903, "The United States guarantees and will maintain the independence of the Republic of Panama"; the language is somewhat similar to that of Article 10 of the Covenant; surely no American would consider that the carrying out of that Treaty by the United States would be a violation of the agreement proposed by Mr. Kellogg.

In reference to the formula proposed by the French, however, the argument of Mr. Kellogg was not so successful. The French expression was "all war of aggression"; and it was said that if the declaration proposed were to be "accompanied by definitions of the word 'aggressor' and by exceptions and qualifications stipulating when Nations would be justified in going to war, its effect would be very greatly weakened and its positive value as a guaranty of peace virtually destroyed".

Now no one had at all proposed any definition of the word "aggressor". The formula of the French was unaccompanied by definitions just as had been the formula of Mr. Kellogg; and, so far as exceptions and qualifications were concerned, they were not only inevitable, but they had in effect commenced; Mr. Kellogg had himself begun their suggestion by intimating his opinion or at least his hope that there was nothing inconsistent between his formula and the "specific obligations" of the Covenant. Assuming this to be correct, we have a partial definition in effect although not one in terms of the renunciation of war as a national policy.

In moving words the argument of the American Note continued in favor of the ideal put forward by the two Governments which it said was "arresting and appealing just because of its purity and simplicity". Such an ideal, said Mr. Kellogg, should not be dealt with in a technical spirit; he hoped that the Governments would not insist upon the adoption of reservations which would destroy "the true

significance of their common endeavors" or record "their impotence, to the keen disappointment of mankind".

Accordingly, the Department of State maintained its former position. In its concluding paragraph the Note stated that the Government of the United States "desires to see the institution of war abolished" and was ready to conclude a single multilateral treaty with the other five Great Powers, "open to subsequent adherence by any and all other Governments, binding the parties thereto not to resort to war with one another." It was said that the precise language to be used was a matter of indifference so long as it "clearly and unmistakably sets forth the determination of the parties to abolish war among themselves."

Finally, the Note renewed the suggestion of the previous Note of January 11 that France and the United States join in transmitting to the other four Governments "for their consideration and comment" the text of the original Briand proposal with copies of the subsequent correspondence.

CHAPTER IX

THE TWO FORMULAS

THE negotiations between France and the United States had now reached a point of rather precise divergence. Two differing formulas had been proposed for the text of the multilateral Treaty. The French had not insisted on their suggested procedure, a treaty between the two countries, to which others would be invited to adhere; although their wishes here were intimately connected with the question at issue. The French formula, according to their view, could be adopted almost regardless of the number of Signatories or the method of bringing in other Parties; whereas the American formula, if acceptable at all, at least required a more general and perhaps even a quite general acceptance of the Treaty before it should come into force.

The French formula was renunciation of war of aggression; the American formula was renunciation of war as an instrument of national policy. With each was coupled an agreement to seek the settlement of all disputes by pacific means only.

A question well worthy of examination is whether in reality there is any difference in thought or in meaning between the two formulas of the two countries. It seems to have been considered on both sides that "war of aggression" is more limited in sense than "war as an instrument of national policy". Admitting the difficulty of determining in the future whether a given case might be within either formula or both, and admitting the equal or perhaps greater difficulty of writing words which would serve as a definition for either, the question may be looked at from the point of view of language and theory.

Certainly self-defense, to which a good many phrases were to be devoted later, was outside of either formula; obviously and as a matter of language, outside of the French formula, for self-defense is the opposite of aggression; and equally outside of the American formula, for Mr. Kellogg not only admitted, but later on in the strongest terms, insisted, that self-defense was inherent, inalienable and wholly unaffected by his proposed treaty or indeed, so to speak, impossible of being affected by any treaty. Thus far the two formulas were certainly in accord.

This seeming accord, however, proves too much. If self-defense is wholly unaffected by the terms of his proposal, as Mr. Kellogg said, and if self-defense is the opposite of aggression, which seems obvious and which was also asserted by Mr. Kellogg,¹ then as a matter of verbal logic, and one might almost say, mathematically, if we exclude self-defense or leave it aside as unaffected by the renunciation of war as an instrument of national policy, there is nothing left but aggression, and this remainder is the French formula.

In other words, and more simply, all war is either aggression or self-defense. With self-defense reserved, nothing could be renounced except aggression.

All this, however, is too simple and convincing to be very real in international relations. It may be that if self-defense is a broad enough expression to include *any* case which a State declaring war might conceive it to include, then the two formulas might come to the same thing; but despite Mr. Kellogg's later sweeping language, it is hardly reasonable to think of self-defense as an expression as having so extensive a meaning as that.

There are in fact various international situations in the world where a State considers, perhaps rightly, perhaps wrongly, that its essential interests, its self-defense, as the

¹ Referring to self-defense, in his speech of April 28, the Secretary of State said: "Express recognition of this inalienable right, however, gives rise to the same difficulty encountered in any effort to define aggression. It is the identical question approached from the other side."

Nation views it, are completely bound up with the protection of regions not within its own territory. Such a situation may seem to be the result generally of a national feeling, but it is often difficult to be certain as to effect and cause. Sometimes the situation itself and its possible consequences are embodied in a treaty and sometimes not. One perfect instance of the latter is the Monroe Doctrine and another is the British sentiment regarding the Suez Canal. The Treaties of Locarno comprise a most notable instance of treaties concerning a particular region; and the Covenant of the League of Nations seeks to make the interest of each nation of the world a part of the common interest of peace for all.

Now it may fairly be said that the Monroe Doctrine is properly to be viewed as a doctrine of self-defense; the British feel the same way about the Suez Canal; the Swiss feel very much the same way about their neutrality. Perhaps others might think that the expression "self-defense" was not broad enough to cover some one or all of these national policies; but is the expression broad enough or could it be deemed broad enough to cover any possible consequences from such obligations as those of the Covenant and of the Treaties of Locarno? Here was the real question between the two formulas. Despite the apparently self-excluding completeness of the words "self-defense" and "aggression", no one would say that action of any nature by a third State under the obligations of the Covenant or of the Treaties of Locarno was "aggression"; and yet some might say that it did not come within the term "self-defense". In other words, while such action could not be argued to be within the French formula of "war of aggression", it *might* be argued to be within the American formula, "war as an instrument of national policy".

It is not enough to say here that war in any one or more of these cases is unlikely, or even highly unlikely. It may be that war by the United States in support of the Monroe Doctrine is remote or that war under the Treaties of Locarno is merely a theoretical possibility; but improbabil-

ity is not solid enough ground for any Government when important policies are concerned, and particularly when these are related to the language of a treaty which, as I shall point out later, purports to be perpetual.

Something further is to be said as to the obligations of the Covenant. If that document is read as a whole, as it should be, and not piecemeal, as it often is, it will be seen that it contains a very general renunciation of war as among its Members. The so-called gap in the Covenant, the paragraph in Article 15, where the Members of the League reserve liberty of action in a certain case, is more legal than political.

However, the Covenant provides for certain consequences or sanctions to follow its breach in certain cases. Perhaps Article 16 is most important here. The sanctions of that Article are definitely limited to a case of resort to war by a Member of the League in violation of the Covenant. There is in terms no agreement to use force; but there is in terms an obligation to apply certain economic measures; and undoubtedly the application of these measures might result in war.

Thus, for example, let us suppose that State A, in violation of the Covenant, makes war on State B; State C applies the economic blockade against State A and war follows between A, the original Aggressor, and C. Indeed it may even be supposed that C might declare war against A, the original Aggressor, for under the Covenant the aggression of A against B is an "act of war" against C. Now it *might* be argued here that any action that C took was not strictly "self-defense", although clearly such action would not be aggression; for it would be action under the terms of a treaty accepted, agreed to and broken by A.

Similar reasoning is applicable to Article 10 of the Covenant. Indeed the guaranties contained in that Article are limited to cases of external aggression and, so far as Members of the League are concerned, external aggression is by Article 10 forbidden. So here we have under any possible view of the obligations of the Members of the League *inter*

se nothing more in any case than agreed action against an Aggressor; thus under Article 10 the argument as to self-defense and so on *might* be the same as under Article 16 and very similar at least to the argument under the Treaties of Locarno.

CHAPTER X

THE FRENCH NOTE OF MARCH 30, 1928

PENDING the next French Note, conversations between the two Governments went on. We know little of what was said; it appears, however, that on March 1, three days after the American Note above discussed, Mr. Kellogg gave to the French Ambassador "the assurance that the renunciation of war, thus proclaimed, would not deprive the signatories of the right of legitimate defense". This seemingly was the first statement by Mr. Kellogg in the nature of a definition of the American formula; and it tended, as the French said, "to dissipate apprehensions".

The debate between the two Governments regarding their respective formulas was continued in the French Note¹ of March 30, although along somewhat different lines. M. Briand made an effort, though not a wholly successful one, to meet Mr. Kellogg's views. Finding that the latter was not at all disposed to yield his point as to the substance of the wording, M. Briand said that the French Government proposed to "adopt as practicable a point of view as possible and to facilitate as far as it can the effort of the American Government in the direction of an immediate decision".

It was argued that it was not possible in a multilateral treaty "to impart thereto the unconditional character desired" by Mr. Kellogg without obtaining the adherence of all States or at least of all those which are "exposed to the possibility of a conflict" with any of the others.

Referring to Mr. Kellogg's point in his previous Note regarding the Resolution of the Pan-American Conference at Havana, M. Briand observed that that Resolution was only

¹ Document 8.

a sort of preliminary leading toward a treaty of arbitration in respect of which there had been numerous reservations and further that in another Resolution of the same Conference the precise expression, "war of aggression" which the French Government had put forward, was employed.

M. Briand then referred to Mr. Kellogg's legalistic argument that the language proposed by France as a bilateral Pact of Friendship could not be objectionable in a multilateral treaty. This argument seems to have been somewhat irritating to the French for the Note says that Mr. Kellogg "appears to have been surprised" by the French proposal of a different formula. M. Briand retorted that his Government believed that it had "explained this point with sufficient clearness" in pointing out that his original project of a treaty between France and the United States was drawn so as to limit strictly its mutual undertakings "to those relations in law resulting from intercourse between the two signatory states alone"; and while within such limits an absolutely unconditional agreement might be entered into, the same wording in a multilateral treaty would expose the Signatories to "juridical difficulties resulting from the respective positions of various powers with regard to one another". Thus M. Briand alluded again to the Covenant, the Locarno Treaties and the Treaties of Neutrality.

Having met the legal argument, M. Briand mentioned also the political aspect of a treaty between France and the United States, saying that as the two countries are "morally united . . . by ties of time-honored friendship", the other treaty engagements of either of them "could never constitute in fact anything but purely theoretical obstacles".

Then, recognising Mr. Kellogg's insistence on "the conception of a multilateral treaty" which "should include an unconditional pledge", the French Government commenced its quite qualified acceptance of Mr. Kellogg's proposal with the following sentence:

Without in any way losing sight of its international obligations, both as a member of the League of Nations and

as a party to the Treaties of Locarno or treaties guaranteeing neutrality, France, for the purpose of finding a common basis for initial negotiations, is wholly disposed, after a new examination of the proposals formulated by Your Excellency, to suggest immediately to the German, British, Italian and Japanese Governments that they join in seeking in the spirit and in the letter of the last American Note any adjustments which in the last analysis may be forthcoming with respect to the possibility of reconciling previous obligations with the terms of the contemplated new treaty.

Thus, the formula desired by Mr. Kellogg, the original Briand proposal, renunciation of war as an instrument of national policy, was accepted and the French formula, for renunciation of wars of aggression, was withdrawn; but the American formula could not in the French view stand alone; "adjustments" were mentioned; and following the statement above quoted the qualifications and explanations which the French desired, some of which have been mistakenly called "reservations" were somewhat elaborately set forth.

First was mentioned the universality of the treaty hoped for by the United States, and noted with satisfaction by France, as a treaty in which the Government of the United States admits the participation "of all the other Governments of the world" In the French view this conception accorded "with a reservation actually necessary for obtaining a real instrument for the establishment of peace by means of a formal engagement among all Powers among whom political controversies may arise," and the position of the French Government in this regard was thus decidedly stated:

The treaty contemplated could not operate in respect of one power which is a party thereto unless the other states exposed to the possibility of grave controversies with that party were also signatories thereof.

Next it was said that clearly, "in order not to turn an instrument of progress and peace into a means of oppres-

sion", upon the violation of the Treaty by one Signatory the others should be released "with respect to the offending state". On these two points France believed herself to be fully in accord with the United States.

The third point was self-defense; France noted the assurance of Mr. Kellogg regarding "the right of legitimate defense" made on March 1 and previously mentioned.

Then came this significant paragraph:

If such is the attitude of the American Government on these three fundamental points, and if it is clearly understood in a general way that the obligations of the new pact should not be substituted for, or prejudice in any way, previous obligations contained in international instruments such as the Covenant of the League of Nations, the Locarno agreements or treaties guaranteeing neutrality whose character and scope cannot be modified thereby, then the differences of opinion which have appeared in the course of previous phases of the negotiation have to do more with words than with the reality of the problem facing the two Governments to-day.

Not even content with this, however, the Note, while expressing accord with the proposal of Mr. Kellogg in his Notes of January 11 and February 27 and agreeing to join with the United States in submitting for the consideration of the other four Governments the correspondence exchanged between the two countries since June, 1927, in fact gave a quite qualified assent to the American proposal; for the Note spoke of the draft agreement to be proposed as one "essentially corresponding in purpose to the original" Briand proposal "in the multipartite form desired by the United States", but "with the changes of wording made necessary by the new concept". This new concept was spoken of as not prejudicing the rights of legitimate defense of the Signatories "within the framework of existing treaties"; and the declaration renouncing war was spoken of as one "condemning recourse to war as an instrument of national policy", an expression which was defined "as a

means of carrying out their own spontaneous, independent policy."

Moreover, the French Note coupled with the provision of the original draft to the effect that the Signatories would never seek a settlement of any disputes among them save by pacific means, a new specific undertaking, namely, "to refrain from any attack or invasion" among themselves; and it was to be "clearly understood" that the treaty would come into force only "after having received universal acceptance" unless the Signatories should agree that certain abstentions might be disregarded; and finally, there was repeated the view that in respect of a Violator of the treaty the other Powers would be released from their obligations thereunder.

It was in this form that the French Government thought the negotiations "could be pursued with the greatest chances of success".

Now all this of course, although the French formula relating to "war of aggression" had been abandoned, was by no means an unconditional acceptance of what Mr. Kellogg had proposed. What he had proposed was that the entire correspondence, including the original Pact of Perpetual Friendship of M. Briand as the basis of discussion, should be submitted to the four Powers by France and the United States jointly for the consideration and comment of the other Governments. This was the proposal of the Note of January 11 and it was renewed in about the same terms in the Note of February 27, although the latter Note said that "the precise language to be employed . . . is a matter of indifference".

As to this proposal the French Note was, instead of being an acceptance, rather a counter offer, in which were embraced four essential points not mentioned by Mr. Kellogg in his previous Notes:

First, that the right of self-defense was not prejudiced by the proposed Treaty; seemingly Mr. Kellogg had already agreed to this.

Second, that the obligations of the Treaty would cease as to a Violator thereof; the French apparently believed that Mr. Kellogg had also agreed to this.

Third, the universality of the Treaty *before* it should come into force, or at least what might be called approximate universality; here the French also seemed to think that Mr. Kellogg might agree with them although he certainly had not.

Fourth, that the obligations of the new Treaty should not in any way prejudice previous treaty obligations, particularly those of the Covenant, of Locarno and of the Neutrality Treaties.

Despite the elaborate language of the French Note and its definition of the American formula and its added undertaking regarding attack and invasion, these were the essential points that it made.

It should be observed here that the ideas of the French Note in all these respects are carried into the language of the later French Draft of April 20. It is also to be noted that the French finally obtained partial or complete satisfaction on all of these points. Mr. Kellogg made a most emphatic statement regarding the right of self-defense which became part of the diplomatic correspondence; a clause regarding a Violator of the Treaty and the release of the other Signatories in such a case *vis-à-vis* the offending State was introduced into the preamble; while the universality of the Treaty in the exact form desired by the French was not accepted, it was in substance achieved, and all the Locarno Powers were admitted as original Signatories; and, finally, it was most definitely asserted in the subsequent negotiations and either specifically admitted or not disputed that the previous treaty obligations mentioned by the French were unaffected by the new agreement.

None the less, the French Note was somewhat unfortunate from the French point of view, particularly in its form. Certainly it was far too elaborate. It seemed technical; broader lines of discussion would have been more effective.

There was only one point vital to the French; all the others were minor and unimportant. Did or did not the proposed treaty in the form desired by Mr. Kellogg affect or limit the previous treaty obligations of France, notably those of the Covenant and the Treaties of Locarno? This was the question and indubitably the French were entitled to an answer to it. If the former treaties were to be changed by the new agreement, they were entitled to know it; and if the former treaties were not changed by the new agreement, they were entitled to have it so stated.

If the French Government had put this question to Mr. Kellogg in a few words and at the same time submitted with their acceptance of Mr. Kellogg's proposal a simple additional phrase to the effect that nothing in the new agreement affected the rights and obligations of former treaties, Mr. Kellogg would have found it somewhat difficult to refuse to accept the addition. In any case such a suggestion would have made the differences in the positions taken by the two Governments clear and precise instead of being somewhat confused and obscure, for Mr. Kellogg would have been unable to avoid an answer in terms.

Indeed it is difficult to see how if such a simple clause had been then proposed it could have been left out of the treaty. The logical argument for it was very powerful and the French Government must have known at the time that it would be supported by the British. Indeed, as Mr. Kellogg had referred to the Havana Conference, the French Government might very effectively have pointed out that the Government of the United States had agreed to precisely such a clause in one of the treaties drafted at Havana.

I have said that this was the only vital question for the French; the others were minor and might have been dismissed in their Note in a very few words. Mr. Kellogg had verbally given his assurance as to self-defense; and whether or not he had then agreed, he turned out to be willing to agree to the very common sense idea that a violation of the Treaty by one of the Parties released the other Signatories from their obligations in respect of the Violator.

Later on Mr. Kellogg even said that this followed "as a matter of law" and was unnecessary of statement. It needed little more than mention at this stage.

The other French point, as I have mentioned above, was the idea that the Treaty must be at least approximately universal before it should go into force; but with a clause safeguarding rights and obligations under former treaties, any question of Signatories or Parties became automatically one of little consequence.

One of the important consequences of the French Note of March 30 was the changing of the form of the subsequent negotiations; instead of joint proposals to the other four Powers, as Mr. Kellogg had suggested, to be made by France and the United States, there were now to come an American proposal and a French counter proposal.

CHAPTER XI

THE AMERICAN DRAFT

MR. KELLOGG had now to decide on the subsequent diplomatic procedure. He had desired and had proposed a joint communication from the French and American Governments to the other four Powers, submitting a proposal for a multilateral treaty for the renunciation of war as an instrument of national policy. The unfortunate and quite qualified assent of the French Government in its Note of March 30, an acceptance which was not an acceptance, led Mr. Kellogg to take another course. It appears that there were conversations as to this next step, for the Note of the American Government now to be mentioned stated that "complete agreement" had been reached¹ "with the Government of the French Republic as to this procedure". In other words, it was agreed during those conversations that the United States should severally, and not jointly with France, address the other four Governments.

The Quai d'Orsay had lost its opportunity. If the negotiations were to result in success, as they did, the success was primarily to be one to be credited to Washington and only partially to Paris.

Accordingly, on April 13 the Department of State delivered identic Notes² to London, Berlin, Rome and Tokyo, submitting to the respective Governments copies of the exchanges up to that time together with the American Draft³ of a treaty and enquiring whether those Governments were

¹ On April 7, as a result of a conversation with the French Ambassador, according to a press notice of the Department of State.

² Document 9.

³ Document 10.

"in a position to give favorable consideration to the conclusion of a treaty such as that transmitted herewith, and if not, what specific modifications in the text thereof would make it acceptable". A copy of the American Draft and of the Note were of course also communicated to Paris.¹ The negotiations were thus extended to the six Great Powers.

The American Note stated that the Government of the United States "desires to see the institution of war abolished and stands ready to conclude with the French, British, German, Italian and Japanese Governments a single multilateral treaty open to subsequent adherence by any and all other governments binding the parties thereto not to resort to war with one another".

The considerations pointed out by the French Government were then mentioned as those "which in its opinion must be borne in mind" by Members of the League of Nations and by Parties to the Treaties of Locarno and other treaties guaranteeing neutrality. Mr. Kellogg did not think that such considerations necessitated any modification of his proposal and advanced "the opinion that every nation in the world can, with a proper regard for its own interests, as well as for the interests of the entire family of nations, join in such a treaty". Moreover, he believed that the execution by the Great Powers of a treaty "solemnly renouncing war in favor of the pacific settlement of international controversies would have tremendous moral effect" and also that it would "ultimately lead to the adherence of all the other governments of the world".

It was then said that the discussions had reached a point where success required that the other four Great Powers "should each have an opportunity formally to decide to what extent, if any, its existing commitments constitute a bar to its participation with the United States in an unqualified renunciation of war".

Thus the other points in the French Note of March 30 were passed by almost without notice. Nothing whatever

¹ Two days earlier than to the other Powers, according to *The New York Times* of April 14, 1928.

was said of self-defense or of the release of the obligations of the Parties to the Treaty in respect of a Violator thereof; and only a slanting allusion was made to the French desire for universality of the treaty, in the expression of the belief that all other Governments would accept it.

It is specially to be noticed that at this time Mr. Kellogg expressed no opinion whatever regarding the well-known treaty obligations of the other Powers; he said nothing at all as to the effect of his proposal, if any, upon the Covenant or the Treaties of Locarno, subjects that he was later elaborately to discuss. He left the question of consistency or inconsistency of those treaty obligations with the new proposal entirely to be passed on by the other four Great Powers in view of the French observations. He expressed an opinion as to the question of policy involved in saying that he thought that every nation could, "with a proper regard for its own interests, as well as for the interests of the entire family of nations, join in such a treaty"; but he left it to the Powers addressed to say whether they could so join consistently with their own treaties.

The Draft transmitted with the American Note was stated to represent "in a general way the form of treaty" which the United States was "prepared to sign" with the other five Great Powers and with "any other Governments similarly disposed"; and attention was called to the fact that Articles 1 and 2 of the Draft were "practically identical" with the corresponding Articles in the Pact of Perpetual Friendship proposed by M. Briand in the previous June.

These two Articles of the American Draft were destined to appear literally and without change in the text of the signed Treaty. For convenience of reference they are here inserted:

Article 1. The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

Article 2. The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

A comparison of the wording of these Articles with that originally proposed by M. Briand discloses certain changes, aside from those made necessary by the multipartite instead of bilateral character of the Draft.

In Article 1, the first part of the language of M. Briand was a solemn declaration of the Parties "that they condemn recourse to war"; in the American Draft this reads that "they condemn recourse to war for the solution of international controversies". No reason was ever advanced in the course of the diplomatic correspondence for the addition of the words, "for the solution of international controversies". Clearly the expression in the American Draft, as a matter of language, is more limited than that of the French proposal; it is not recourse to all war or to war generally that the declaration of the American Draft condemns, but merely recourse to war "for the solution of international controversies".

Probably the words were added by the American draftsman with the purpose of avoiding any possibility of argument that the wording was extensive enough to include a civil war or was intended to condemn the "sacred right of revolution", and without any thought that the new wording limited in any way the condemnation of recourse to war between States.

It is at least arguable, however, that international war is possible although not "for the solution of international controversies", but for something else; that a State engaged in war for self-defense might not in any sense be within the terms of the condemnation as it might not have resorted to war for the solution of a controversy. Conceivably such State might have offered to submit the controversy to arbitration and have been attacked despite its offer; it could hardly be said of the defending State that its resort to war was for the solution of the controversy; so it is possible

that the draftsman had self-defense in mind, although the subsequent diplomatic discussions of self-defense do not tend to support this view.

In the second part of Article 1 a slight but interesting change was made from the wording of the original proposal of M. Briand. Article 1 of the Pact of Perpetual Friendship was a double declaration; the Parties declare that they condemn recourse to war and declare that they renounce it respectively as an instrument of national policy. This was perfectly clear in the French text by its use of the two infinitives *condamner* and *renoncer*. The Department of State translation of this was not so clear; it says that the parties "declare . . . that they condemn recourse to war and renounce it respectively as an instrument of national policy." The proposal of Mr. Kellogg, as will be seen from looking at its text above quoted, puts a comma after the word "controversies". Accordingly, the declaration is now limited to the first point; the Parties do not declare that they condemn recourse to war and then declare that they renounce it as an instrument of national policy; the Parties declare that they condemn recourse to war and then the Parties renounce war as an instrument of national policy.¹

Article 2 of the American Draft followed very closely the wording of the Draft Pact of Perpetual Friendship. However, at the beginning were inserted the words "The High Contracting Parties agree that". Perhaps this does not change the legal effect of the earlier French wording; but it makes it clear that Article 2, as now written, was proposed in the form of a definite agreement.

Article 3 of the American Draft contained a formal clause regarding the ratification of the Treaty with the provision that it should "take effect" as soon as all the ratifications of the six Great Powers had been deposited; it was then provided that when the treaty had "come into effect" it should "remain open as long as may be necessary for adherence by all the other Powers of the world".

Following this were clauses regarding the deposit of the

¹ The final French text of the Treaty is correspondingly altered.

instruments of adherence, notification, transmission of certified copies and so on.

Finally, the American Draft, while of course written in English, set forth, like the French Draft Pact of Perpetual Friendship that the Treaty was to be signed "in the French and English languages, both texts having equal force".

Article 3 and the final clauses of the American Draft were not altered at all¹ during the later discussions. With the blanks filled in, the wording of the Treaty signed on August 27 is (except as to the Preamble) the wording of the American Draft of April 13.

The Preamble of the earlier Draft of M. Briand, referring as it did only to the relations between the two peoples, was not of a character consonant with a multilateral treaty; so the Preamble of the American Draft was in an entirely new form. It contained four rather stilted paragraphs. As the first three of these were later rewritten they may be more conveniently noticed in connection with the revised language. The fourth paragraph of the Preamble, however, remained unchanged in the final text as follows:

Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavor and by adhering to the present treaty as soon as it comes into force bring their peoples within the scope of its beneficent provisions, thus uniting the civilised nations of the world in a common renunciation of war as an instrument of their national policy;

It is to be regretted that the words, "encouraged by their example", were not omitted, as in the Preamble of the later French Draft, for they are quite inappropriate. Other Powers were quite as willing and anxious to participate as were those finally permitted to join as original Signatories of the Treaty. The idea of superiority and of teaching a moral lesson to others which is conveyed in this American expression is highly unfortunate.

¹ Except that "year of our Lord" became "year".

CHAPTER XII

THE FRENCH DRAFT

DIRECTLY following the American proposal of April 13, and in accordance with the procedure agreed on by the two Governments,¹ came the French counter proposal.² This was transmitted to the five Great Powers on April 20. It was unaccompanied by any Note.³ It was, however, meant to be read in the light of the French Note of March 30, previously noticed; and indeed the French Draft of April 20 is the embodiment in the form of a draft treaty of the points of the earlier French Note.

The French Draft contained six Articles as against three of the American proposal. It may be said at once that the French Draft, like the Note on which it was based, was entirely too elaborate and in particular is this statement applicable to its Article 1.

While the French Article 1 included the wording of the corresponding Article of the Kellogg Draft, it expanded it by a lengthy reference to the "rights of legitimate self-defense within the framework of existing treaties" and in particular it contained an elaborate and involved definition of the words "instrument of national policy." This was defined as "an instrument of individual, spontaneous and independent political action taken on their own initiative and not action in respect of which they might become involved through the obligation of a treaty such as the Covenant of

¹ It was in accordance with the wishes and perhaps even at the suggestion of Mr. Kellogg that the French Government submitted its Draft.

² Document 11.

³ Verbal explanations made at the time at Washington are not available.

the League of Nations or any other treaty registered with the League of Nations". This language was followed by the added phrase: "They undertake on these conditions not to attack or invade one another."

Now there may be some doubt, and I think there is, as to *precisely* what the phrase "renounce war as an instrument of national policy" means; but, whatever it may mean, no such cumbersome definition as the French proposed could possibly be acceptable in a general treaty, particularly by the United States, even if it were accurate; and certainly, as a matter of language, its accuracy is open to grave question. The French might far better from a diplomatic point of view have left Mr. Kellogg's simple Article 1 intact, regardless of its possible meaning; for the rights and obligations of France under all her treaties, including those of the Covenant and those of Locarno, were perfectly safeguarded by Article 4 of the French Draft which read thus:

The provisions of this treaty in no wise affect the rights and obligations of the contracting parties resulting from prior international agreements to which they are parties.

This language of M Briand's Article 4 made any elaboration of Mr. Kellogg's Article 1 unnecessary. Indeed, if the French had proposed their Article 4 by itself, it is difficult to see how Mr. Kellogg could have objected to it; but the lengthy and involved text of Article 1 as proposed by the French along with their Article 4 tended to obscure the points raised and to strengthen the American position against the inclusion of any addition to the Treaty in the form of the French Article 4; although, as will be seen, the British favored it and although, as will also be seen, Article 4 is in substance though not in form accepted as part of the meaning of the Treaty.

The French also proposed an Article 3 to the effect that if one Party should contravene the treaty the others would be released in respect of that Power from their obligations thereunder. Seemingly it was the French view that Mr.

Kellogg had agreed in principle to this idea; and whether this view was correct or not at the time, certainly Mr. Kellogg did assent and later embodied a clause to cover the point in the Preamble of the Treaty.

Article 2 of the French Draft was based upon the language of the corresponding Article in the original Briand proposal and accordingly did not differ in substance from the Article in the American proposal of April 13

The other French addition was their Article 5, which contemplated the general acceptance and ratification of the Treaty by the Powers of the world *before* it should come into force; like the American Draft it included a provision that the Treaty was to be open "for the accession of all Powers".

Article 6 of the French Draft contained the ratification and other formal clauses. While less detailed in its terms than the corresponding Article 3 of the American Draft, it need not be specially noticed.

Neither need any outline be given of the Preamble which the French proposed. While corresponding to some extent with the proposed American Preamble, it was simpler, shorter and better written.

The French position may be very simply stated, although it was somewhat obscured by the text of the French Draft. France wanted to save any question regarding her rights and duties under the Covenant of the League of Nations and the Treaties of Locarno. Other treaties were in mind but they were all dependent upon or interlocked with the chief ones. These were the French objectives and to attain them a specific clause was proposed as the French Article 4, and with the same aim the French wished to expand the list of Signatories and to state specifically that a violation of the Treaty released the other Powers as against the Violator. The French position, which had undoubtedly been taken after consultation with other Powers, received some support in Europe, notably from the British Government.

It is worth while repeating that the French Government quite obviously made a mistake in not limiting its proposed

changes to the simple sentence of Article 4 above quoted, consisting of only twenty-seven words. With this point gained, the other considerations raised by the French would have become either minor or even wholly unimportant.

CHAPTER XIII

COMMENTS OF THE FOUR POWERS

THE views of France and of the United States were now before the British, German, Italian and Japanese Governments. The comments of these four countries upon the American proposal and the French counter proposal, in the light of the diplomatic correspondence between France and the United States, formed the next step in the exchanges, although at least some of those comments were much influenced by the well-known speech of Mr. Kellogg on April 28 before the American Society of International Law. While that speech was perhaps not strictly an official utterance at the time, it became such when it was discussed in the subsequent diplomatic correspondence and indeed adopted by the Department of State itself in its later note of June 23 as setting forth "the construction placed by my Government upon the treaty proposed by it" and quoting verbatim and at length from the speech itself.

The first of the comments of the four Great Powers to be received was that of the German Government in its Note¹ dated April 27. By reason of the diplomatic situation at the time this German Note ranks high in importance among the four. Germany was on the most cordial terms with the United States. Almost any proposal made by the American Government was bound to have governmental and popular support in Germany. At the same time relations between Germany on the one hand and the Governments of London and of Paris on the other had become quite friendly and Germany had every reason to wish them to become more so.

¹ Document 12.

Now it was currently said at the time that the German Note was an unqualified acceptance of Mr. Kellogg's proposal and comparison was drawn between this attitude of the German Government and the so-called reservations of France. It will be seen, however, from an analysis of the German Note that this is a very superficial view and that in essence the position of the German Government was the same as the previous position of Paris and the same as the later position of London.

The date of the German Note, April 27, is one day earlier than Mr. Kellogg's speech before the American Society of International Law. That speech was not completed until a very short time before it was delivered and no advance releases of it were given out. The regular press release is dated April 28. So the German Note was certainly written and transmitted without any knowledge of the terms of the Kellogg speech; there is even a possibility that, on the other hand, the Note had some influence on the wording of the speech.¹

The German Note first referred to the negotiations between the Governments of the United States and France and to the proposal made in the American Note of April 13; it stated that there had also been taken into consideration the French Draft of April 20.

The Note then expressed the warmest and most cordial approval of "an international pact for the outlawry of war." It said that "the two main ideas" on which were based the "initiative" of M. Briand "and the resulting proposal of the United States correspond fully to the principles of German policy."

Mentioning then the "considerations" put forward by the French Government to which reference had been made by the American Note, Herr Stresemann declared the German position at some length:

So far as Germany is concerned, the Covenant of the League of Nations and the Rhine pact of Locarno come into

¹ See p. 72, *infra*.

consideration as international agreements which might affect the substance of the new pact; other international obligations of this kind have not been entered into by Germany. Respect for the obligations arising from the Covenant of the League of Nations and the Rhine pact must in the opinion of the German Government remain inviolable. The German Government is, however, convinced that these obligations contain nothing that could in any way conflict with the obligations provided for in the draft treaty of the United States. On the contrary, it believes that the binding obligation not to use war as an instrument of national policy would only serve to strengthen the fundamental idea of the Covenant of the League of Nations and of the Rhine pact.

The attitude of Germany here is precisely the attitude of France, namely, that the Covenant and the Locarno Treaties must remain inviolate. This is in effect what M. Briand had said and also what Sir Austen Chamberlain was to say. Herr Stresemann, however, expressed the view that there was nothing in the existing treaties inconsistent with the proposed new Treaty. On this point Mr. Kellogg had not expressed a definite opinion in the Note of April 13, although he was about to discuss the matter at some length; and it was this point that M. Briand wished to save by Article 4 of the French Draft. According to the Stresemann view Article 4 of the French Draft was unnecessary simply because its omission meant the same thing as its inclusion.

The German Government went on to say that it proceeded on the belief that the proposal of the United States "would not put in question the sovereign right of any state to defend itself." It added that if one State violated the pact it was "self-evident" that the other Parties to the agreement "regain their freedom of action" as to such State; and accordingly that it seemed unnecessary "to provide expressly for the case of a violation."

As to the universality of the treaty, the German Government found itself in accord with both France and the United States that such universality must be "the ultimate

goal." It was thought, however, that the American Draft opened "a practical way" to this result as it was to be expected that other States would adhere.

Accordingly the German Government declared that "it is ready to conclude a pact in accordance with the proposal of the Government of the United States and to this end to enter into the necessary negotiations with the Governments concerned"; and the Note concluded with a reference to the influence of such a pact on international relations generally and particularly on the efforts for general disarmament and the possibilities of settling in a peaceful way "the existing and potential conflicts of national interests."

Next in order came the Italian Note¹ of May 4 signed by Signor Mussolini.

The Note is very brief and discussed none of the points previously raised, while expressing the "lively sympathy" of Italy and offering "her cordial collaboration towards reaching an agreement."

The absence of discussion in the Italian Note is not to be explained by its reference to a previous (unpublished) Note of April 23; for that earlier note was merely a formal acknowledgment.

The Italian Note made mention of the fact that a proposal had been made for a preliminary meeting of legal experts of the Great Powers. It said that the Italian Government had "adhered to this procedure" but had expressed the opinion that such a meeting could only be effective if it included a representative of the United States. Accordingly there was expressed "the live desire" of the Italian Government "that the participation of the United States" in such a preliminary meeting "be not lacking."

At about the time of the delivery of the French Draft of April 20, a suggestion had been informally made by the Quai d'Orsay that a consultation of jurists from important members of the League be held to consider the Kellogg proposal in connection with the obligations of

¹ Document 13

the Covenant, or the legal bearing of the proposal on international agreements in force.

While this suggestion appears to have been then made only to certain Governments, and not extended to the United States, it was permitted to become known¹; and later on, it was "tentatively" put forward by Sir Austen Chamberlain.

Like the Italian view above mentioned, the opinion of Tokyo was that such a meeting should be held only if the United States were represented.²

Mr. Kellogg, however, never favored the suggestion and he let this be known publicly on May 4; a day or two later there was a semi-official announcement from Berlin that such a conference was considered superfluous; the American attitude made any such meeting impossible; and the suggestion was not further mentioned in the diplomatic correspondence.³

Sir Austen Chamberlain's Note⁴ of May 19, addressed to the American Ambassador in London, is one of the most significant of the diplomatic exchanges preceding the Treaty. It is a model of clarity and plain-speaking. It discussed at length the American and French proposals both in principle and textually and left no doubt as to the British policy on all points.

It appears from the British Note that the attention of the British Government was drawn⁵ to the speech of Mr. Kellogg by the American Ambassador in London and that that speech had a great influence in the formulation of the British answer to the American proposals.

With the general aim and purpose of the American proposal the British Government expressed cordial sympathy;

¹ See *The New York Times* of April 21, 1928.

² See *The New York Times* of May 3, 1928.

³ It may have been mentioned in the conversations at Washington; for on May 9 Mr. Kellogg again stated to the press that he thought there was no necessity for such a conference.

⁴ Document 14.

⁵ This must have been done quite informally; for the text of the Kellogg speech was not cabled by Washington to our representatives abroad nor transmitted officially to them in any way at the time

and while the Note was written primarily on behalf of "His Majesty's Government in Great Britain," it concluded with the statement that "as a result of the communications which have passed" the Dominions and India were in like accord and would be prepared to accept an invitation to participate in the Treaty. Indeed, it was very politely intimated that such participation was regarded by London as essential and that "His Majesty's Government in Great Britain" would not sign alone.

The British position was in general accord with that taken by the French; but the British did not think that any explicit statement in the Treaty as to the right of self-defense was essential. It was considered that the language of Article 1 of the American Draft did not exclude action in self-defense and allusion was made to the statement of Mr. Kellogg in his speech of April 28: "There is nothing in the American draft of an anti-war treaty which restricts or impairs in any way the right of self-defense." While the British Note made no reference in detail to the wording of the French Article 1, the effect of the British Note was to reject the French Draft in favor of the American in this respect.

The French Article 3, however, providing that violation of the Treaty by one Party should release the others from their treaty obligations in respect of the Violator, was supported by the British; they thought that "if the treaty stood alone" the addition of some such clause would probably be necessary. Here again Mr. Kellogg's speech of April 28 was taken into account. Mr. Kellogg had asserted: "There can be no question as a matter of law that violation of a multilateral anti-war treaty through resort to war by one party thereto would automatically release the other parties from their obligations to the treaty-breaking State." Whether this is as certain "as a matter of law" as Mr. Kellogg thought may be doubted; but the British were not concerned with legal abstractions but merely with the legal effect of this particular Treaty. They suggested that means might be found of placing this un-

derstanding on record; and later on Mr. Kellogg added a clause to his draft in the Preamble which, in view of the previous correspondence, leaves no doubt in the matter.

. . . . any signatory Power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty.

The British laid great stress on the point because of its bearing on their obligations under the Covenant of the League of Nations and the Locarno Treaty. It was considered that there was no "real antagonism" between them and the Treaty proposed by Mr. Kellogg because "the sole object of all these engagements is the elimination of war as an instrument of national policy."

But, as the British Note pointed out, both the Covenant and the Treaty of Locarno provide certain sanctions for a breach of their obligations. Accordingly the British argued that it must be "understood that the obligations of the new engagement will cease to operate in respect of a party which breaks its pledges."

The relation between the Briand-Kellogg Treaty, on the one hand, and the Covenant and the Treaties of Locarno, on the other, will be more fully discussed later. It may be mentioned here, however, that the point made by the British is quite distinct from and much broader than the point regarding self-defense. The sanctions of Article 16 of the Covenant might become applicable and the guarantee of Great Britain under the Treaties of Locarno might require the use of force in a case in which the British themselves were not attacked at all.

At this point in the Note the British made a very important declaration of policy; it is worth quoting in full, for no understanding of the British position regarding the Briand-Kellogg Treaty or of their foreign policy generally can be complete without taking into account this very definite announcement of Sir Austen Chamberlain:

For the Government of this country respect for the obligations arising out of the Covenant of the League of Na-

tions and out of the Locarno treaties is fundamental. Our position in this regard is identical with that of the German Government as indicated in their note of the 27th April. His Majesty's Government could not agree to any new treaty which would weaken or undermine these engagements on which the peace of Europe rests.

Accordingly, the British supported the French Article 4 which has been quoted above, saying that they would prefer to see "some such provision" embodied in the text and adding: "To this we understand there will be no objection."

This last sentence gives one to wonder. No such clause was finally embodied in the text of the treaty. Mr. Kellogg, as will be seen, took another course. Why did the British understand at this time that there would be no objection to the insertion of such a clause? Was it simply inferred from Mr. Kellogg's speech or was it the result of some informal communication from Washington? As I have previously indicated, a very similar clause with at least somewhat similar purposes was accepted by the United States (Article 28) in the Convention on Maritime Neutrality signed at Havana on February 20, 1928.

Before leaving the point it should be noted here that the British argument *as a whole* was only on behalf of "His Majesty's Government in Great Britain." While the five Dominions and India are separate members of the League of Nations, no one of those Governments is a Party to the Treaties of Locarno.

Next came the declaration of what has been called, even in the House of Commons, the British "Monroe" Doctrine. Sir Austen Chamberlain wrote that it was "desirable" that he should "remind" the American Government that

there are certain regions in the world, the welfare and integrity of which constitute a special and vital interest for our peace and safety. His Majesty's Government have been at pains to make it clear in the past that interference with these regions cannot be suffered. Their protection against attack is to the British Empire a measure of self-defense.

It must be clearly understood that His Majesty's Government in Great Britain accept the new treaty upon the distinct understanding that it does not prejudice their freedom of action in this respect.

The regions were not specified; Egypt is certainly one of them and the Persian Gulf doubtless another. The British considered that their position was similar in this respect to that of the United States. It is to be pointed out here that in the later elaborate Note of the United States Government of June 23 no allusion whatever is made to this statement of Sir Austen Chamberlain and accordingly the latter reiterated the "understanding" in his Note accepting the new American Draft on July 18

The silence of the United States is of course a tacit acceptance of the British position; none the less that silence is a striking circumstance. Perhaps Mr. Kellogg thought it wiser to leave the Monroe and the British Doctrines safely under his general discussion of self-defense. The British in their Note had alluded to the Monroe Doctrine, although not by name, and further discussion of the British point might have led to some observations in the correspondence about the Monroe Doctrine itself. Certainly nothing could be more devoutly *not* wished by any American Secretary of State than any such observations. Why make difficulties in the Senate?

Finally, the British considered what Powers should be Signatories to the Treaty. The American Draft provided that ratification by all the Signatories should be necessary before the Treaty went into force. Accordingly the British thought that too large a list of Signatories would be inconvenient. The general question was, however, regarded by the British as "minor" and they obviously desired here, as far as possible, to defer to the wishes of the United States. Still, they suggested that it might be embarrassing if "certain States in Europe" were not included in the first instance, meaning here the Signatories, other than the Great Powers, to the Treaties of Locarno, Belgium, Poland and Czechoslovakia. These countries were later added to

the list by Mr. Kellogg as were also the British Dominions and India whose participation, as I have mentioned above, was considered essential by "His Majesty's Government in Great Britain."

Finally, came the answer¹ of Japan. The Note of Baron Tanaka of May 26 spoke of the "high and beneficent aims of the proposal," and said that it was taken "to imply the entire abolition of the institution of war." The approval by the Japanese Government of the proposal of the United States could hardly have been expressed in stronger terms.

While containing no direct reference either to the British Note of May 19 or to the Kellogg speech of April 28, the Japanese Note set forth in a few words the substance of Mr. Kellogg's interpretation of his Draft:

The proposal of the United States is understood to contain nothing that would refuse to independent states the right of self-defense, and nothing which is incompatible with the obligations of agreements guaranteeing the public peace, such as are embodied in the Covenant of the League of Nations and the treaties of Locarno.²

The Note then went on to express the firm belief that "unanimous agreement on a mutually acceptable text for such a treaty as that contemplated is well capable of realization by discussion between the six powers referred to," and offered "to collaborate with cordial good will in the discussions." No hint was given as to what form those discussions would take and diplomatically this meant that Japan left the question of procedure to be determined by the United States.

On this point it is necessary to consider the diplomatic situation at the time. Before the six Powers were two Drafts, the American Draft and the French Draft. In the light of the Kellogg speech of April 28 there was little, if any, difference in principle between the two; in other words, the Kellogg Draft plus the Kellogg speech meant

¹ Document 16.

² The mention of the Treaties of Locarno here is rather surprising, as Japan is not a Party thereto.

in substance the same as the French Draft. The question of wording was largely whether any language embodying the interpretation of the Kellogg Draft should go into the treaty text or not. The British Note had supported the inclusion of some Article like the French Article 4 referring to prior treaty engagements; but had not otherwise deemed any change in the text essential. It was generally thought that the views of the French Government had been modified somewhat since its counter proposal of April 20, so far as the text of the treaty was concerned. And here again Mr. Kellogg's speech made this a natural supposition.

Furthermore, the British had made an important statement of policy regarding certain "regions," the so-called British Monroe Doctrine, and this declaration had been made after the French counter proposal, the German Note and the Italian Note.

Accordingly, there was as yet no complete agreement regarding the text of the Treaty; so the Japanese mention of further discussions was quite correct. It was for Mr. Kellogg to decide upon the form which they would take; and there was even yet some uncertainty as to the number of Powers that would participate in them.

CHAPTER XIV

THE DOMINIONS AND INDIA

THE ideas of France regarding the wording and the interpretation of Mr. Kellogg's proposals for a Six-Power treaty had been elaborately set forth in the French counter proposal of April 20; but their substance had been well known beforehand from the previous correspondence with the French Government, particularly the French Note of March 30; and it was equally well known that exchanges of views had taken place between France and other Powers; so that the French counter proposal might be taken to be generally inclusive at least of the views of the other Great Powers; indeed, the event so proved, as the only additional point raised was made by the British in stating their own Regional Doctrine.

So Mr. Kellogg was early in a position to take a stand regarding those "reservations" as they are usually but inaccurately called; and he stated officially the position of the United States at length in his speech made before the American Society of International Law on April 28. At the time of the delivery of his speech, Mr. Kellogg had before him the French Draft of April 20, but no one of the comments of the other four interested Governments, with the possible exception of the German Note of April 27; that German Note *may* have been seen by Mr. Kellogg before the manuscript of his address was final.¹

While I have called that speech of Mr. Kellogg an official statement of the attitude of the United States, it was not, strictly speaking, an official communication when de-

¹The German Note was delivered in Berlin. While it required translation and cabling, it was received at the Department of State at 1:15 p.m., on April 28.

livered although of very high importance. But when its language was quoted textually and set forth in the American Note of June 23 as the position of the United States, it became in every sense a part of the diplomatic correspondence.

However, pending Mr. Kellogg's Note of June 23, he solved one of the problems presented to him by addressing on May 22 invitations¹ to the Governments of the five British Dominions² and of India to participate in the signature of the Treaty. It is to be observed that these invitations went out only three days after the date of the British Note of May 19; and it is fair to suppose that in the conversations that had been going on in Washington Mr. Kellogg had agreed to the participation of the Dominions and India and accordingly that the British insistence on the point was insistence to which they knew acquiescence would be accorded.

The invitation to Canada was delivered at Ottawa and that to the Irish Free State at Dublin, in each of which capitals the United States has a Minister. The other four identic Notes were addressed to Sir Austen Chamberlain for Australia, New Zealand, South Africa and India respectively.

After referring to the British Note of May 19 and the previous American Proposal, the invitation expressed gratification that the Governments of the Dominions and the Government of India were so favorably inclined toward the American Proposal "as to wish to participate therein individually and as original signatories."

Accordingly there was extended to each of the respective Governments "a cordial invitation to become one of the original parties to the treaty for the renunciation of war which is now under consideration." It was added that the United States would address to each of these Governments

¹ Document 15.

² That is, the five British Dominions that are separate members of the League of Nations. Australia, Canada, the Irish Free State, New Zealand and South Africa. Newfoundland is a British Dominion but is not a member of the League of Nations and is accordingly included in "His Majesty's Government in Great Britain."

"at the same time and in the same manner as to other governments whose participation in the proposed treaty in the first instance is contemplated, any further communications which it may make on the subject of the treaty after it has been acquainted with the views of all the governments to which its note of April 13, 1928, was addressed."

The international status of the Governments of the five Dominions and even of the Government of India was thus regarded by the Department of State as one of perfect and complete equality with other Powers. Each is addressed separately and replies separately; indeed, as will be seen, the different British replies in the subsequent correspondence were by no means in the same terms; and so when the next American Note was sent to the interested Governments, seven identic originals were transmitted to the respective Governments of seven parts of the British Empire.

This attitude of the Department of State has considerable significance generally and not only in connection with the Treaty presently considered. The United States admits the British Empire as a whole as seven distinct Signatories of the Treaty. All these seven Signatories are on the same footing of equality with each other and with the rest, not only the British Government in London,¹ but the Dominions and India as well. This is a very far cry from the wild talk here in 1920 about the "six votes," as they then were, of the British Empire in the League of Nations. If a Conference were held, as it might be, of the Parties to this Treaty, the British Empire as a whole would have not six "votes," but seven.

Indeed it is very interesting to notice that the later American Note of June 23 goes farther in one regard than does the Covenant in the Treaty of Versailles. In that Treaty, in the list of the Members of the League of Nations, the

¹ There is perhaps no convenient expression to describe, politically or geographically, the Government of those areas which the Treaty calls "Great Britain and Northern Ireland and all parts of the British Empire which are not separate Members of the League of Nations". In his Note of June 23, Mr. Kellogg speaks of the "Government of Great Britain" but this is not accurate. The British Notes use the form "His Majesty's Government in Great Britain."

British Empire appears in its alphabetical order and directly thereafter, somewhat indented, the list of four Dominions in their order of presumed importance, followed by India. So there the Dominions and India under the *ægis* of an indent, are deemed the British Empire group; but in the Kellogg Note where the fourteen Governments to which it was addressed are mentioned *seriatim*, they are put in the English alphabetical order with Australia first, Canada between Belgium and Czechoslovakia, the Irish Free State between India and Italy, New Zealand between Japan and Poland, and South Africa at the end.

The acceptances of the Dominions and India took a longer time for transmission than might have been anticipated; the latest of them is dated June 15; and this circumstance is illustrative of one of the difficulties attending any general and single foreign policy of the British Empire. The various Notes afford some interesting contrasts in expression and diplomatic form; and it is to be remembered, in connection with them all, that no one of those Governments is a Party to the Treaties of Locarno.

The acceptance of New Zealand,¹ under date of May 30, expressed warm appreciation of the invitation of the United States but made no reference at all to any of the points raised in the diplomatic correspondence. The concluding sentence of the Note of New Zealand, which follows, rather emphasises the British Empire connection of that Dominion:

His Majesty's Government in New Zealand welcome the opportunity, in cooperation with His Majesty's Governments in other parts of the British Empire, of associating themselves with the Government of the United States in this movement to add greater security to the peace of the world and they will be happy to share in any negotiations leading to the conclusion of the proposed treaty.

On the other hand, the Note from Dublin² under the same date contains no word or phrase which even hints at any

¹ Document 17.

² Document 18.

relationship between the Irish Free State and any other. So far as its form is concerned, the Note might have been signed by the Minister of Foreign Affairs of France or of Italy instead of by Mr. McGilligan.

After acknowledging the invitation of the United States and expressing warm welcome of its action "in initiating this further advance toward the maintenance of general peace," the Government of the Irish Free State expressed "their cordial agreement with the general principle of the draft treaty."

Referring to the Covenant, the Note said that the Government of the Irish Free State shared the view expressed by Mr. Kellogg in his speech of April 28 "that nothing in the draft treaty is inconsistent with the Covenant of the League of Nations" and accordingly that Government accepted "unreservedly" the invitation "to become a party to the treaty jointly with the other states similarly invited," and offered "to participate in, and to further" any negotiations "necessary for the conclusion" of the Treaty.

The Canadian Note¹ from Ottawa was also dated May 30. It spoke in high terms of the American Proposal on behalf of "the whole Canadian people" and expressed its pleasure in being "in accord with all His Majesty's other governments"

The Note then referred to the favored position of Canada "in its ties of kinship and allegiance as well as in its historic and neighborly friendships, and with half a continent as its heritage." Despite this, the Note went on to say, the Great War had brought home "the danger which all countries share" and led Canada to turn to the League of Nations.

The Note then took up the question whether the obligations of the Covenant "would conflict in any way with the obligations" of the proposed treaty. The Canadian Government stated that it was convinced that there is no conflict either in the letter or in the spirit between the two or "between the obligations assumed" under either. In

¹ Document 19.

this connection it was said that the League was regarded by Canada, "with all its limitations, as an indispensable and continuing agency of international understanding" and that Canada would be unwilling to take any step "which would prejudice its effectiveness."

The Note then discussed at some length the value of the League, its operation and the obligations of the sanctions of the Covenant; it mentioned Canadian views regarding the interpretation of the Covenant which had been expressed in various Assemblies of the League and it was intimated that "the full realisation of the ideal of joint . . . pressure upon an outlaw power" would require "either an approach to the universality of the League originally contemplated" or "an adjustment of the old rules of neutrality."

The conclusion of the argument was to the effect that as the proposed Treaty would not impose any obligation in respect of a non-Signatory or in respect of a Signatory which had broken the treaty, any decision to apply sanctions under the Covenant "would not appear to conflict with the obligations of the treaty." Accordingly, "His Majesty's Government in Canada" said that it would gladly cooperate "in any future negotiations" leading to the signature of such a treaty as that proposed by the United States and would recommend "its acceptance to the Canadian Parliament."

The Note¹ of the Commonwealth of Australia, dated June 2, was very brief. It expressed the appreciation of that Government of the invitation of the United States, stated that they "had carefully and sympathetically examined" the proposed treaty and the correspondence exchanged and concluded with this sentence.

They believe that a treaty such as that proposed would be a further material safeguard to the peace of the world and they will be happy to cooperate to the fullest extent in its successful conclusion.

¹ Document 20.

The Note¹ of the Government of India dated June 11 was still shorter; conveying to the Government of the United States an expression of "warm thanks . . . for this invitation which they are happy to accept," it added merely that the Government of India associated themselves with the British Note of May 19.

The last acceptance² of the series was that of the Union of South Africa, dated June 15. The Note from the Foreign Office transmitted a message received by telegraph from General Hertzog, Minister of External Affairs. This telegram stated that the invitation of the United States "was highly appreciated" by "His Majesty's Government in the Union of South Africa" and that they would gladly take part. It was added, however, that it was taken "for granted" that the right of self-defense remained, that as to a Violator of the Treaty the other Parties would be free from obligation and, finally,

. . . that provision will be made for rendering it quite clear that it is not intended that the Union of South Africa, by becoming a party to the proposed treaty would be precluded from fulfilling as a member of the League of Nations its obligations towards the other members thereof under the provisions of the Covenant of the League.

There was nothing in any one of the Notes of the five Dominions inconsistent with what had been written by London under date of May 19; though nothing was said in any of the five Dominion Notes about the British Regional Doctrine upon which Sir Austen Chamberlain had laid so much stress and, naturally enough, nothing about the Treaties of Locarno; nor was anything said about the question of Signatories, the Dominions being content with their own invitations. While Canada discussed at some length the relationship between the new Treaty and the Covenant, the only other Dominions that laid stress on the obligations of the latter document were Ireland and South

¹ Document 21.

² Document 22.

Africa; Australia and New Zealand made no direct reference to the League. General Hertzog alone mentioned the right of self-defense and only his Government and that of Canada alluded to the question of a possible violation of the treaty.

While the five Dominion Notes are not in any way discordant *inter se*, their authors would have had quite a difficult task, even meeting round a table, to combine their views and expressions into one common form of acceptance.

CHAPTER XV

THE SECOND AMERICAN DRAFT

THE Department of State now had before it, with the French counter proposal, the comments of ten other Governments on the two Drafts. Some of these advanced the discussion very little if at all; the Notes of Italy, of Australia and of New Zealand had been almost silent regarding the differences in the two proposals; and the Note for the Government of India had merely referred to the British Note of May 19.

The other six Governments, however, had put forward their respective positions more or less at length and these, taken in connection with the French attitude, laid before Mr. Kellogg two problems for the following negotiations.

One of these, however, it may almost be said had been already solved. This was the question as to what Powers and how many should be original Signatories to the Treaty. The original proposal of M Briand for a two-Power agreement, France and the United States, had been expanded by Mr. Kellogg so as to visualise a Treaty of the six Great Powers to which, in expectation, or at least in hope, all the other countries of the world might become Parties. The French after some vacillation had suggested that this multi-lateral Treaty should not come into force until it had universally or almost universally been accepted by all Powers. However, the particular and urgent desire of the French in this regard was that at least all the Parties to the Treaties of Locarno should sign the new Treaty in the first instance.

Now in his speech of April 28, Mr. Kellogg had already stated his willingness to admit to such participation the other Locarno Powers: Belgium, Poland and Czechoslo-

vakia; and he had more formally brought in the five British Dominions and the Government of India. No country had joined with France in her desire for what may be called approximate universality of the Treaty *before* it should come into force. The British Note had discussed the matter somewhat but with no insistence except as to the Dominions and India, now admitted into the charmed circle; the other Notes had said nothing on the point.

The expansion of the list of Signatories so as to include the three Locarno Powers above mentioned was seemingly satisfactory to France. Perhaps that Government had so stated during the conversations that proceeded while the various Notes were being transmitted. However this may be, the Government of France later formally concurred, making no further question even as to the States which were Parties to the Treaties of Neutrality to which it had alluded; and it laid no further stress on its wish for the generality or approximate generality of the Treaty before it should come into force.

Moreover it should be said here that the procedure finally adopted, although perhaps not explicitly indicated by the terms of the Treaty itself, resulted in complete realization of the French desire. When the invitation to the other Powers of the world to adhere to the Treaty was sent out by the Government of the United States immediately after its signature, it followed that the general acceptance of this invitation would bring the Treaty into force as to the non-Signatory Powers at precisely the same moment as it came into force as to the Signatory Powers. The months that had to elapse between August 27, the date of signature, and the deposit of ratifications by the Signatories, permitted the general deposit of instruments of adherence in the meantime or at least at the same time as the deposit of the original ratifications. In other words, if and when the Treaty comes into force, it will come into force as among some fifty or more Powers, including not only all the parties to the Treaties of Locarno, but substantially all and perhaps even literally all the Members of the League of Nations. Thus the aim

of France is to be realised although in a manner and form differing from her counter proposal.

Accordingly the next Note¹ of the United States, which was dated June 23, was to be addressed to fourteen Governments, including the eleven previously concerned in the negotiations, and those of the three Powers above mentioned, Belgium, Poland and Czechoslovakia.

Before considering this Note, however, it is necessary to allude to the other problem which was before Mr. Kellogg at the time of its preparation and transmission. This was whether and if so to what extent the text of the previous American proposal should be changed. I do not here refer to formal changes such as those required by the increase in the number of Signatories, but rather to substantive changes to meet the hesitations and wishes of other countries, particularly those of the French and the British

Most questions as to such substantive changes, however, were very intimately related to and even dependent upon the number of Parties to the new Treaty, the extent of its universality so to speak.

Thus, for example, if all the Parties to the Treaties of Locarno were also Parties to the new Treaty and if the Governments of all those States asserted, as they did, that the Locarno obligations must remain intact, there was little left of any point about the Treaties of Locarno. Certainly there was nothing at all left of that point under such circumstances if it was admitted that the Parties to the new Treaty became automatically released from any obligations thereunder to a Violator thereof.

The situation was not then quite so clear as to the obligations of the Covenant and their remaining unimpaired under the new Treaty, although it was quite similar. Of the fifteen Signatories of the new Treaty, fourteen were Members of the League. Some of those Governments had emphatically announced the view that there was nothing in the proposed Treaty of Mr. Kellogg which conflicted with their obligations under the Covenant. This was the pos-

¹ Document 23

ition of Germany, of the Irish Free State and of Canada. The Governments of Paris, of London and of Capetown had preferred an explicit provision in the Treaty so as to obviate any possibility of doubt. But here again if all or even if almost all the Members of the League of Nations became parties to the new Treaty and if a Violator of the new Treaty had no rights thereunder, any such explicit clause became of less consequence

The date of the signature of the Briand-Kellogg Treaty, August 27, became of significance here. The Ninth Assembly of the League of Nations met a few days thereafter. Every Member of the League had then received a formal invitation to adhere to the Treaty. In the Note of invitation it was said that a certified copy of the Treaty and the complete record of the prior diplomatic correspondence would be transmitted to the various Governments, who were, however, already well aware of their text. Furthermore, the British Government, through the Secretary General, had on August 4 formally transmitted to all the Members of the League copies of the British Notes of May 19 and July 18, calling attention, as a matter of general interest to all Members of the League, to the British view that no incompatibility existed between the Briand-Kellogg Treaty and the obligations of the Covenant. Any Member of the League desiring to question the consistency of the Briand-Kellogg Treaty with the Covenant would hardly be in a position to do so unless the question of possible inconsistency was brought forward at the Ninth Assembly; and certainly in view of the diplomatic correspondence, including particularly the emphatic statements of the French, the Germans and the British, the United States would not be in a position to raise any such question unless it now openly dissented from the views expressed.

The other point raised by the French was the matter of self-defense; but here no other country had thought any specific addition to the text of the Treaty essential. A statement to this effect had been made by Sir Austen Chamberlain and in such of the other Notes as had mentioned the

matter of self-defense at all, namely, those of Germany, Japan and the Union of South Africa, the fact that the Treaty did not affect the right of self-defense had been taken as a matter of course.

Accordingly it was deemed necessary by Mr. Kellogg to make only one change in the text previously proposed with the Note of April 13. This change was the insertion of a clause regarding the release of the obligations of the Parties to the Treaty in respect of a Violator thereof; and with this change the new text¹ was transmitted in identic Notes² to the fourteen Governments.

The American Note of June 23 is now to be analysed. It is highly significant both in what it does and in what it does not state; and it may be said at the outset that the inclusion in it verbatim of a lengthy extract from the previous speech of Mr. Kellogg on April 28 made the Note rather awkward in form and somewhat repetitive in expression.

A striking omission from the Note was in regard to the so-called British "Monroe" or Regional Doctrine, announced in the British Note of May 19. As to this, Mr. Kellogg, for reasons at which I have guessed, says nothing at all, making no allusion to it whatever. While the silence here of the American Note means consent to the British declaration, it is, none the less, a very interesting silence.

After referring to the previous correspondence, the Note included as "the construction placed by my Government upon the treaty proposed by it" the statement of the Kellogg speech regarding the considerations previously emphasised by France, arranged under six numbered headings.

The first of these relates to self-defense; and the opening language here is as follows:

There is nothing in the American draft of an antiwar treaty which restricts or impairs in any way the right of self-defense. That right is inherent in every sovereign state and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend

¹ Document 24

² Document 23.

its territory from attack or invasion and it alone is competent to decide whether circumstances require recourse to war in self-defense.

This is pretty sweeping language; it is so sweeping indeed that its last phrase, at least, is apt to come up to plague the Parties to this Treaty hereafter.

Self-defense is then contrasted with aggression as "the identical question approached from the other side" and reference is made to the difficulty encountered in any effort to define aggression. Accordingly, it was argued that no reference to self-defense should be made in the Treaty since no treaty provision could "add to the natural right" and accordingly that "it is not in the interest of peace that a treaty should stipulate a juristic conception of self-defense since it is far too easy for the unscrupulous to mould events to accord with an agreed definition".

The argument of course is a perfect *non sequitur*. It may be undesirable and certainly would be difficult to frame a complete and perfect juristic conception of self-defense; but it does not at all follow from this that *mention* of self-defense without any juristic conception at all is undesirable. What Mr. Kellogg wanted here, as elsewhere, was to leave unchanged the text in the body of the Treaty, with its interpretations outside in other papers.

While I am not now discussing the interpretation of the Treaty, the fact is that the right of self-defense is *not* left implicit and unexpressed; it is down in black and white as a part of the record; and furthermore Mr. Kellogg's own statement in his speech is to some extent a juristic conception. Certainly it is a juristic conception to say that the "right is inherent in every sovereign state" and to say that it is "implicit in every treaty" and also to say, as Mr. Kellogg did later in his argument, that "no specific reference to that inalienable attribute of sovereignty is . . . necessary or desirable."

If to speak of an "inalienable attribute of sovereignty" is not a juristic conception, it is difficult to see what could be. Indeed, it is a juristic conception with which, I think, some

jurists would not agree. Certainly if Mr Kellogg means here that a part of this right of self-defense which is "inalienable" is that a State "alone is competent to decide whether circumstances require recourse to war in self-defense", I think that jurists generally would disagree with him; unquestionably a State may by agreement leave to a tribunal either generally or in a given case the question as to whether or not the occasion is one of self-defense. Incidentally, Mr. Kellogg's blanket definition or juristic conception of self-defense is sufficiently wide to well wrap up the Monroe Doctrine and at the same time to keep comfortably warm in the same bed the British Regional Doctrine.

The next heading of the American Note is "The League Covenant". The Covenant of the League of Nations, says Mr Kellogg, "embraces no primary affirmative obligation to go to war; the obligation, if any, is secondary and attaches only when deliberately accepted by a state". To support this argument, Mr. Kellogg mentions Article 10 of the Covenant and the interpretative resolution of the Fourth Assembly which failed of adoption because of the dissenting vote of Persia. Accordingly Mr Kellogg gives it as his opinion that "there is no necessary inconsistency between the Covenant and the idea of an unqualified renunciation of war" The Covenant, he says, "may be considered" as "authorising war in certain circumstances" but "this is not a positive requirement".

The conclusion that there is no inconsistency between the Covenant and the idea of renunciation of war is certainly correct.

The Covenant contains extensive and very definite primary obligations, as Mr. Kellogg calls them, *not* to go to war. In almost every case in theory and probably in every case in reality the Members of the League do unqualifiedly renounce war among themselves by the terms of the Covenant; that it is consistent with the Covenant for the Members of the League to increase, so to speak, either in particular cases or generally, their obligations *not* to resort to war is undoubted. They may make, as in many instances

they have, all-inclusive treaties of arbitration; the Treaties of Locarno are themselves instances of such an extension of the obligations of peace.

The argument of Mr. Kellogg, however, which leads up to his conclusion is a wholly incomplete one. Let us assume that under Article 10, in accordance with the interpretative resolution of the Fourth Assembly, it is for each Member of the League to decide in a given case in reference to its obligation under Article 10 to what degree it is bound to assure the execution of its obligation by employment of its military forces; then there *might* come a case when the constitutional authorities of such a Member of the League *had* decided that it *was* bound to use its military forces against the State which had violated Article 10. If that Aggressor State were a party to the Briand-Kellogg Treaty and the State attacked either were or were not, would the Briand-Kellogg Treaty prevent or limit the assumed obligation under Article 10?

Now all this is highly speculative and remote as an actuality; but it is none the less a part of the legal problem presented and one which Mr. Kellogg's argument does not answer at all.

The real answer of course, so far as the Members of the League are concerned, is that they will probably all become Parties to the Briand-Kellogg Treaty. The legal answer is to be found partly in Mr. Kellogg's later statement that a Violator of the Treaty automatically ceases to be entitled to the benefit of its provisions and partly in the very explicit and definite statements in the previous correspondence and in the later answers of the other Powers which are as much a part of the record as is the American Note itself.

The Belgian reply, for example, of July 17 said that that Government "is pleased to note that the proposed pact will maintain unimpaired the rights and obligations arising from the Covenant of the League of Nations".

It seemed that Mr. Kellogg wished to limit his discussion of the League of Nations as much as possible; there is no further direct reference to the League or to the Covenant in

the Note, not even in the summing up of the argument. The views of the other Governments, however, regarding the continuance of rights and obligations under the Covenant were none the less accepted by Mr Kellogg though without mention of them in terms; for later on the Note referred to the receipt of the Notes of the British, German, Italian and Japanese Governments as well as those of the British Dominions and India and it was said that none of those Governments had "expressed any dissent from the above-quoted construction", as the extract from the earlier Kellogg speech is called. Now several of those Notes which the Department of State had received had referred to the Covenant and the obligations thereunder in unmistakable language. I may well quote again here what the British Government said referring to the Covenant as well as to the Locarno Treaties: "His Majesty's Government could not agree to any new treaty which would weaken or undermine these engagements on which the peace of Europe rests", and further "Mr. Kellogg has made it clear . . . that he had no intention by the terms of the new treaty of preventing the parties to the Covenant of the League . . . from fulfilling their obligations."

So there can be no doubt whatever that the Briand-Kellogg Treaty leaves the rights and obligations of the Members of the League of Nations (whether Parties to the Treaty or not) intact and that this is so whether Mr Kellogg's interpretation of Article 10 of the Covenant be the correct juristic conception or not.

One discrepancy between the American Note and the previous British Note is to be noticed. In the British Note, referring to the Covenant and to the Locarno Treaties it was said: "His Majesty's Government would for their part prefer to see some such provision as Article 4 of the French draft embodied in the text of the treaty. To this we understand there will be no objection".

In other words, the British Government, while not insisting on any precise form of words, had supported the proposal of the French to insert an Article referring to the

rights and obligations of the Parties resulting from prior international agreements.

Yet the American Note says: "Neither has any of the replies received by the Government of the United States suggested any specific modification of the text of the draft treaty proposed by it on April 13, 1928"

Now certainly the British Note proposed such a specific modification, even if it did not set out the exact wording for its text, but merely referred to the French Draft. Indeed the British Government seem to have thought that such an addition would be acceptable to the Department of State and accordingly left its language to be written by Mr. Kellogg.

The next heading of the Kellogg Note was "The Treaties of Locarno." Here as stated above Mr. Kellogg had yielded to the wishes of the French and agreed that the Locarno Powers should be Signatories to the Briand-Kellogg Treaty in the first instance.

Mr. Kellogg pointed out that the guarantees of the Locarno Treaties would require the use of force only in the event of a violation of those treaties by a resort to war by one of the Parties. He then argued that if the Locarno Powers were all Parties to the Briand-Kellogg Treaty, a violation of the one engagement would be a violation of the other, going so far as to say that in such a case "there would be a double assurance that the Locarno Treaties would not be violated by recourse to arms". Furthermore, he said "as a matter of law" that upon a violation of the Briand-Kellogg Treaty the other Parties thereto would "be automatically released from their obligations thereunder and free to fulfil their Locarno commitments".

Later on, under the fifth heading of his speech, Mr. Kellogg summed up his conclusion thus:

There can be no question as a matter of law that violation of a multilateral antiwar treaty through resort to war by one party thereto would automatically release the other parties from their obligations to the treaty-breaking state.

Despite this opinion and although it was added that "any express recognition of this principle of law is wholly unnecessary", Mr. Kellogg yielded his view by giving in the revised Preamble of the new Draft "express recognition to the principle that if a state resorts to war in violation of the treaty, the other contracting parties are released from their obligations under the treaty to that state".

I shall point out hereafter that the language of the Preamble is broader even than this statement of Mr. Kellogg.

Next, reference was made under the fourth heading to certain treaties guaranteeing neutrality which had been first mentioned in the French Note of January 21. The point made by the French seems to have been rather a minor one. Whether France had Switzerland particularly in mind is not clear;¹ but certainly any such treaties of neutrality are within the system of the League of Nations and would be safeguarded by the maintenance of the terms of the Covenant intact, without more, so far as the new Treaty was concerned. Indeed Mr. Kellogg rather cuttingly observed in his comment: "The United States is not informed of the precise treaties which France had in mind and therefore cannot discuss their provisions".

However, Mr. Kellogg offered to permit the Parties to such neutrality treaties to become original Signatories if the French so desired. The French Government, however, while making a courteous allusion to the matter in its next Note, seems to have pressed it no further and to have been satisfied by the expansion of the list of Signatories so as to include Belgium, Poland and Czechoslovakia.

The last extract from the Kellogg speech discussed the "universality" of the treaty. Some of the discussion had lost its point since April 28 in view of the fact that the number of proposed Signatories was now to be expanded from six to fifteen. While it was said that the United States desired and always had desired that the Treaty should be

¹ The view advanced that the treaties referred to are French treaties of alliance seems to me to be unfounded.

"world-wide in its application" it was pointed out that it would be preferable not to await the ratifications of "all the nations of the world" before the entering into force of the treaty. Any one Signatory might delay or even refuse ratification which, it was said, would "render abortive the efforts of all the other Powers" Accordingly, the United States was unwilling to increase the number of original Signatories of the treaty beyond the fifteen now contemplated, except perhaps for the unnamed Parties to the Neutrality Treaties which had been mentioned by France.

There were two rather distinct questions involved in the position thus taken by the United States. The first was as to the negotiations. If the text and the meaning of the Treaty were to be discussed by Notes exchanged with and among all or nearly all the other countries of the world, much inconvenience and delay would have been inevitable with even the danger that further explanations, qualifications or reservations might load the proposal down sufficiently to sink it. Mr. Kellogg had refused to have any meeting about the Treaty, even a technical conference of experts of the Six Powers, so it was even more impracticable to have a larger gathering. Clearly any expansion of the negotiations by increasing the number of negotiators was undesirable; all the Governments of the world had complete knowledge of the proceedings; the diplomatic correspondence and the various drafts had been made public as they were written and had been universally discussed in the Press; they had of course also been discussed among the various Foreign Offices, whether Parties to the negotiations or not. There was no doubt that any formula agreed on by the fifteen Signatories would be acceptable to most and perhaps all other Nations.

The other question was, as I have indicated, quite distinct from the negotiations proper. Other Powers, some or all, might have been informed of the text agreed on by the fifteen negotiating Powers and invited to sign the Treaty without being asked to discuss its form; in other words, the United States might have said: "Agreement has been

reached among fifteen Powers on the text of the treaty which we expect to sign on such and such a date and your country would be welcomed as a Signatory also". The other method, which Mr. Kellogg adopted, was to have the Treaty signed by the fifteen Signatories and *then* invite other Governments to adhere. The second course gives to the adhering Powers a position of somewhat less dignity than that of the original Signatories. Such a country as Spain, for example, is given a later place than Czechoslovakia.

Mr. Kellogg's expressed reason for the course which he chose was that any increase or at least any large increase in the number of Signatories would permit one Power, perhaps a small and unimportant Power, by delaying or withholding its ratification, to prevent or at least postpone the coming into force of the Treaty. This was correct enough in view of the form in which the ratification clause of Mr. Kellogg's Draft was written and which remained unchanged in the final text. This said that the Treaty was to be ratified by the Signatories and would "take effect as between them as soon as all their several instruments of ratification shall have been deposited". In other words, when *all* the fifteen instruments of ratification are deposited, the Treaty goes into force, but not till then.

Now, the ratification clause of the Treaty might well have been written differently and no reason was given why it should not or could not be changed. With an increased list of Signatories, let us say fifty, the Treaty might have provided that it should go into force as soon as the ratifications of the fifteen Signatories who had conducted the negotiations had been deposited. There is nothing unusual in such procedure and it could not have delayed the going into force of the Treaty at all; and it would have been much more acceptable to some of the other countries.

After the American Note of June 23 was written and published, there was much discussion in the Press as to whether or not Russia would become or would be invited to become a Party to the Treaty. Nothing was said as to

this in the diplomatic correspondence. Neither the British Government nor that of the United States then had diplomatic relations with the Government of the Union of the Soviet Socialist Republics. True, Mr. Kellogg said that he hoped that the Treaty would be world-wide and, true, the Treaty said that it should "remain open as long as may be necessary for adherence by all the other Powers of the world"; but neither of these expressions is an invitation to any particular Power. Indeed, neither of them is a statement as to when the other Powers may adhere. Under them, no other Power might adhere at least until after the Treaty had been signed by the fifteen Signatories; but the subsequent date is not fixed. Mr Kellogg's hope and the language of the Treaty Draft both included Russia; but they each *might* have meant the Government of Russia *after* its recognition by the United States and not before.¹

Under diplomatic procedure, the decision regarding the issuance of an invitation to Russia rested with the United States as the proponent of the Treaty; but apparently even the British Government did not know at this time the intentions of the United States regarding Russia; for Sir Austen Chamberlain said in the House of Commons on July 30 that he would not support an invitation to the Russian Government by the United States, but neither would he object to it.

With the Note of June 23 Mr. Kellogg transmitted a new Draft ² of the Treaty proposed by the United States. The text of its three Articles is identical with that of the Draft of April 13. The only alterations from the previous Draft were in the language of the Preamble; appropriate changes were there made in view of the increased number of Signatories; and the first three of its four adjective paragraphs were recast.

The changes in the two opening paragraphs were of

¹ It was pointed out earlier that an invitation was extended to the Union of the Soviet Socialist Republics on August 27, the date of the signature of the Treaty.

² Document 24.

minor importance, resulting in somewhat less stilted language; they can best be seen by reading them side by side:

April 13

Deeply sensible that their high office imposes upon them a solemn duty to promote the welfare of mankind;

Inspired by a common desire not only to perpetuate the peaceful and friendly relations now happily subsisting between their peoples but also to prevent war among any of the nations of the world;

June 23

Deeply sensible of their solemn duty to promote the welfare of mankind;

Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated;

It was in the following paragraph of the Preamble, however, that Mr Kellogg made what was intended and considered as a substantive change in the Treaty.¹ In the earlier Draft the reading was this:

Desirous by formal act to bear unmistakable witness that they condemn war as an instrument of national policy and renounce it in favor of the pacific settlement of international disputes;

In the later Draft, as in the final text, this reads as follows, the final phrase being the concession of Mr Kellogg regarding the effect of a violation of the Treaty:

Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process and that any signatory power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty;

¹ Ordinarily, of course, as Mr. Kellogg said in his speech of March 15, "a preamble is not a binding part of a treaty".

With this, Mr. Kellogg announced that "the Government of the United States is ready to sign at once a treaty in the form herein proposed" and formally expressed the "confident hope" that each of the fourteen Governments to whom the Note was addressed would "be able promptly to indicate its readiness to accept, without qualification or reservation, the form of treaty now suggested by the United States". Mr Kellogg added that if the fifteen Powers could agree on this treaty the United States Government "is confident that the other nations of the world will, as soon as the treaty comes into force, gladly adhere thereto and that this simple procedure will bring mankind's age-long aspirations for universal peace nearer to practical fulfilment than ever before in the history of the world".

The Note concluded with a formal and quite precise request "to be informed at as early a date as may be convenient" whether the Governments addressed would join in signing the Treaty "in the form transmitted herewith".

Some comment on certain of these phrases of Mr. Kellogg may well be made here. Diplomatically, the Note took quite a firm position as to the form of the Treaty. The Government of the United States in advance took an almost positive attitude that no further changes in the text were desired or would be accepted.

Furthermore, the Note showed the desire of Washington to keep separate from the text of the Treaty the explanations in the correspondence regarding it. The above quoted expressions, "without qualification or reservation" and "this simple procedure" are a very strong indication of this. It may at once be said that any such desire is impossible of realization, except as a matter of form. The explanations and statements of the Parties are as much a part of the meaning of the agreement among them as is the text of any one of the Articles of the Treaty proper. Inevitably is this true of the explanations and interpretations given by the Government of the United States, the proponent of the proposed text; Mr. Kellogg's 3,000 word Note must

always remain, "as a matter of law", an essential element of any interpretation of the agreement, so also, I may add, is the silence of the Note regarding the British Regional Doctrine; and so also are included the previous Notes of the other Governments as well as their subsequent Notes prior to the signing of the Treaty proper. Whether it be called explanation or interpretation or qualification or reservation, everything that the Parties themselves agreed that the Treaty means, it does mean. Any suggestion to the contrary is erroneous and any such suggestion hereafter made by any Signatory to the Treaty would be a breach of faith.

Another point illustrates the anxiety of the Department of State to keep the Treaty strictly in its original form and above all not to alter in the slightest degree the body of the text. Mr. Kellogg had yielded to the wish of the French that there should be some statement embodying the substance of Article 3 of the French Draft to the effect that violation of the Treaty by one Party would release the others from their obligations to the Violator. This idea, it will be remembered, had been supported by the British (in their Note of May 19) who thought, in view of Mr. Kellogg's speech, that there was an understanding to this effect and suggested that means might "be found without difficulty of placing this understanding on record in some proper manner so that it may have equal value with the terms of the Treaty itself".

This "understanding" Mr. Kellogg, while declaring it to be unnecessary of expression, placed in his Preamble, perhaps the most inappropriate and awkward method of accomplishing the result.

Indeed the form adopted is a very curious one. The Treaty begins by reciting the various Heads of States; then follow various adjective paragraphs containing some laudatory phrases and high-sounding expressions such as are frequently deemed proper in a Preamble. In the midst of these, however, is an expression reciting that the several Heads of States mentioned are

Convinced . . . that any signatory Power which shall hereafter seek to promote its national interests by resort to war should¹ (*sic*) be denied the benefits furnished by this treaty.

So in between the expressions regarding the perpetuation of peaceful and friendly relations and pacific means and the uniting of the civilised nations of the world in a common renunciation of war and so on, appears the clause which provides for the effect of a breach of the Treaty or war by one of its Parties. More inartistic drafting would be difficult.

Curiously enough, Mr. Kellogg's addition to the Preamble is to some extent a definition of the expression, "war as an instrument of national policy". The intent of the added clause is, as stated by Mr. Kellogg, "that if a state resorts to war in violation of the treaty, the other contracting parties are released from their obligations under the treaty to that state". By the wording of the Preamble a violation takes place when a Power seeks "to promote its national interests by resort to war"; so war as an instrument of national policy is thus defined as "resort to war to promote national interests". With this may well be compared the French conception in their Note of March 30, "war . . . as a means of carrying out their own spontaneous, independent policy".

I may also point out here that the language above quoted is broader than was intended. The Power which is to be denied the benefits of the Treaty is any Signatory "which shall hereafter seek to promote its national interests by resort to war". This wording does not specifically limit the resort to war to such resort against another Party to the Treaty; it is *any* resort to war to promote national interests; that is to say, if Russia were not a Party to the Treaty and Poland, a Signatory, should resort to war against Russia in order to promote Polish national interests, then, according to the Preamble, this would be sufficient to deprive Poland of the benefits of the Treaty. I do not mean to intimate that this is what is intended; but it is what is said.

¹ The French is "*devra*".

The position of the Government of the United States had been fully, definitely and positively stated in the Note of June 23. While to a large extent the views of Mr. Kellogg had been known since his speech of April 28, that address had become a part of the record and in the Note which incorporated it Mr. Kellogg had gone further in some respects toward what may be called the European view. It was now for the fourteen Governments addressed to declare their attitude in response.

In the light of the previous correspondence it was not doubtful that most of the Replies would express willingness to sign the Treaty as proposed by Mr. Kellogg. It seemed likely that this would also be the attitude of the British despite the silence of Mr. Kellogg regarding their Regional Doctrine on which London had laid such stress. More uncertain was the view to be taken by the French; their wishes had been satisfied on some points but not on others, and there had been no Note to the United States from the French Government since its Draft of April 20. Conversations had been going on at Washington and doubtless also in Paris between France and the three Locarno Powers, now admitted as Signatories to the Treaty, with whom she has such close friendships; but from what had made public the position of the French Government could not perhaps be forecast; although it was safe to suppose, both as to the British attitude and the French, that it would be considered that an acceptance of the latest proposal of the United States would in any case be less difficult than a refusal.

CHAPTER XVI

THE FOURTEEN REPLIES

THE American Note of June 23 was addressed to fourteen Governments¹ in identic texts. It expressed the hope that those Governments would accept, "without qualification or reservation, the form of treaty now suggested by the United States" and transmitted with the Note.

As has been previously shown, the American Note, embodying as it did the Kellogg speech of April 28, had gone a long way toward meeting the views of the British and French Governments; but one of the questions remaining to be discussed in the consultations between the two Governments was whether the interpretations or explanations of the Treaty text should be allowed to rest merely in the diplomatic correspondence or should be embodied in a more formal protocol. To consider this and perhaps other matters the Legal Advisers of the British, French and German Foreign Offices met in Berlin and the final decision was not to seek any further conventional paper.

The fourteen Replies of the respective Governments addressed were all dated within the ten days from July 11 to July 20, and may now be considered in chronological order.

The earliest was that of Germany,² dated July 11. The German Government considered that the standpoint of the United States, as set forth in the Note, "corresponds with the fundamental German conception as it was communicated in the Note of April 27," and agreed "to the

¹ Listed in the American Note as: Australia, Belgium, Canada, Czechoslovakia, France, Germany, Great Britain (sic), India, Irish Free State, Italy, Japan, New Zealand, Poland and South Africa

² Document 25.

changes in the preamble." Accordingly the German Government took "cognizance of the statements made" in the American Note of June 23; and followed with its formal assent in stating:

that it agrees to the interpretation which is given therein to the provisions of the proposed pact, and that it is accordingly ready to sign this pact in the form now proposed.

Next in order is the French Note¹ of July 14.

The Reply of M. Briand was rather elaborate and very precise. In the course of it the "interpretations" of the Government of the United States were summed up in the following language:

Nothing in the new treaty restrains or compromises in any manner whatsoever the right of self-defense. Each nation in this respect will always remain free to defend its territory against attack or invasion; it alone is competent to decide whether circumstances require recourse to war in self-defense.

Secondly, none of the provisions of the new treaty is in opposition to the provisions of the Covenant of the League of Nations nor with those of the Locarno treaties or the treaties of neutrality.

Moreover, any violation of the new treaty by one of the contracting parties would automatically release the other contracting parties from obligations to the treaty-breaking state.

It is desirable also to quote a later paragraph of the communication of M. Briand:

Thanks to the clarification given by the new preamble and thanks, moreover, to the interpretations given to the treaty, the Government of the Republic congratulates itself that the new convention is compatible with the obligations of existing treaties to which France is otherwise a contracting party and the integral respect of which of necessity is imperatively imposed upon her by good faith and loyalty.

¹ Document 26.

Then followed the formal assent of France in these words:

In this situation and under these conditions, the Government of the Republic is happy to be able to declare to the Government of the United States that it is now entirely disposed to sign the treaty. . . .

The Note¹ of the Irish Free State was also dated July 14. The Government of the Free State referred to their earlier Note of May 30 as indicating their willingness to accept "unreservedly" the earlier American Draft of April 13, adding, however:

. . . . holding, as they did, that neither their right of self-defence nor their commitments under the Covenant of the League of Nations were in any way prejudiced by its terms.

In the previous Irish Note, no mention had been made of "their right of self-defence" but only of the Covenant.

The Italian Note² dated July 15 and signed by Mussolini was very brief. Its assenting clause was this:

The Royal Government . . . takes note of and agrees with the interpretation of the said treaty which the Government of the United States sets forth in the above mentioned Note of June 23 last and on this premise declares that it is disposed to proceed to the signature thereof.

The Reply of Canada³ dated Ottawa, May 16, was signed by the Canadian Prime Minister, W. L. MacKenzie King, in his capacity of Secretary of State for External Affairs. The Reply simply acknowledged the American Note and stated "that His Majesty's Government in Canada cordially accepts the treaty as revised and is prepared to participate in its signature."

The Belgian Note⁴ was dated July 17 and its acceptance of the American Draft was in the following terms:

¹ Document 27.

² Document 28.

³ Document 29.

⁴ Document 30.

The text prepared by the Government of Washington commands the full approbation of the Royal Government. The Government notes with satisfaction the explanations and interpretations contained in Your Excellency's letter. It is pleased to note that the proposed pact will maintain unimpaired the rights and obligations arising from the Covenant of the League of Nations and from the Locarno agreements which constitute for Belgium fundamental guarantees of security.

The Reply of Poland¹ was also dated July 17. It declared the acceptance by the Polish Government of the text and the readiness of the Government to affix its signature. It said that the interpretation of the Treaty in the American Note of June 23 "confirms the fact that the pact is destined to insure the consolidation of peaceful relations between States on the basis of the existing international obligations." Following this the Polish Government "takes note of the following statements":

(1) That the pact does not affect in any way the right of legitimate defense inherent in each state.

(2) That each state signatory to the pact which may endeavor to realise its national interests by means of war shall be deprived of the benefits of the said pact.

(3) That no incompatibility exists between the stipulations of the pact against war and the obligations deriving from the Covenant of the League of Nations for states which are members of the latter.

It was further said that "these precisions" and the invitation to all States to adhere "are of a nature to assure to Poland the possibility of satisfying her international obligations."

It is of interest to observe that Poland in her Note avoided any mention of the Locarno Treaties.

Next to be considered are the five Replies from London, signed by Sir Austen Chamberlain and dated July 18.

¹ Document 31.

Of those Notes the most important is naturally that¹ written on behalf of "His Majesty's Government in Great Britain" which said that that Government "accept the proposed treaty in the form transmitted by you and will be glad to sign it."

Following this, the Note recalled the previous British communication of May 19 and alluded to the points therein raised. The first of these was the recognition of the principle that if one of the Parties to the treaty resorted to war in violation of its terms, the other Parties "should be released automatically from their obligations" to the Violator. It was said as to this that the stipulation inserted in the Preamble of the revised American Draft whereby such a Violator "is to be denied the benefits furnished by the treaty" was satisfactory and sufficient to meet the point mentioned.

The Note referred to the fact that in the earlier British Note it had been pointed out that "respect for the obligations arising out of the Covenant of the League of Nations and of the Locarno treaties was the foundation of the policy of the Government" and further that "they could not agree to any new treaty which would weaken or undermine these engagements." As to these obligations the Note went on to say that the Government did "not consider, after mature reflection, that the fulfillment" of them "is precluded by their acceptance of the proposed Treaty." Referring again to the German Note of April 27, the British Government concurred in the view therein enunciated that "those obligations do not contain anything which could conflict with the treaty proposed by the United States Government."

Thus far throughout the diplomatic correspondence no specific reference had been made by any Government to the provision of the Covenant against treaties inconsistent therewith. Under Article 20 of the Covenant "the Members of the League . . . solemnly undertake that they will not hereafter enter into any engagements inconsistent with

¹ Document 32.

the terms thereof." All of the fourteen Governments to whom the American Note of June 23 was addressed are Parties to this obligation¹

Referring then to the question of Signatories, the British Government noted "with peculiar satisfaction" that all the Locarno Powers were now invited to become original Signatories, adding "It is clearly the wish of the United States Government that all members of the League should become parties either by signature or accession," and expressed the wish that "a general invitation will be extended to them to do so."

The Note then repeated in almost exactly the same words some of the language of the earlier Note regarding "certain regions" and reiterated that "His Majesty's Government in Great Britain accept the new treaty upon the understanding that it does not prejudice their freedom of action in this respect."

This wording, almost identical in the two British Notes, may perhaps be called a reservation. However, even here the British Government in their earlier Note had taken the position that the protection of such regions against attack would be "to the British Empire a matter of self-defense"; so this declaration of the British Regional Doctrine is rather to be deemed an explanation of the extent of the right of self-defense as defined by Mr. Kellogg.

Regarding the question of self-defense the Note went on to say that the British Government agreed with the views of Mr. Kellogg in his speech of April 28 to the effect

¹ In a letter dated August 4, 1928, addressed to the Secretary General of the League of Nations with reference to the proposals of the United States and enclosing copies of the British Notes of May 19 and July 18, the British Government said: "In considering these proposals His Majesty's Government in Great Britain have been at great pains, in view of the provisions of Article 20 of the Covenant of the League of Nations, to assure themselves that their acceptance would not involve any inconsistency with the obligations resulting from the Covenant. As appears from the enclosed notes, they are satisfied that signature of the proposed treaty will not involve any conflict with the obligations resulting from membership in the League. As the matter is evidently one of general interest to all the Members of the League, I am to request that copies of the enclosed notes may be circulated to them."

that the proposed treaty did not in any way restrict or impair the right of self-defense and also "with his opinion that each State alone is competent to decide when circumstances necessitate recourse to war for that purpose."

Repeating the opening statement of the willingness of the British Government to sign the Treaty, but prefixed here by the words, "In the light of the foregoing explanations," the Note concluded by referring to the Treaty as "a further and signal advance in the outlawry of war."

The Note¹ of the Commonwealth of Australia, in quite different wording, covered three of the points previously discussed in the correspondence as being the only questions "in which they are especially interested."

Regarding self-defence, the language is:

They accept the assurance given by the United States Secretary of State that the right of self-defence of a signatory state will not be impaired in any way by acceptance of the proposed treaty.

Allusion is then made to Mr. Kellogg's statement that the revised preamble gives "expressed recognition to the principle" that the Parties would be released from their obligations to a Violator of the Treaty. As to this the Australian Note says: "They accept this declaration that the preamble in this respect is to be taken as part of the substantive provisions of the treaty itself."

The Government of Australia also considered that the Draft Treaty "is not inconsistent" with the Covenant of the League of Nations; and the Note concludes with its acceptance of the draft Treaty, saying that the Australian Government "will be quite agreeable to signing it in its present form."

The Reply² of the Union of South Africa, while signed by Sir Austen Chamberlain, was in substance a message from General Hertzog, Minister of External Affairs of

¹ Document 33.

² Document 34.

the Union of South Africa, which had been received by telegraph and which the Note quoted in full.

General Hertzog with "very great pleasure" expressed the willingness of his Government to sign the treaty, expressing the opinion that the draft was not "inconsistent with the terms of the Covenant of the League of Nations by which they are bound" and adding the view that "the objects which the League of Nations was constituted to serve can but be promoted by members of the League of Nations participating in the proposed treaty."

The other points mentioned in the communication were these, which the Government of South Africa noted "with great satisfaction":

(a) That it is common cause that the right of legitimate self-defence is not affected by the terms of the new draft;

(b) That, according to the preamble, any signatory who shall seek to promote its national interests by resorting to war shall forfeit the benefits of the treaty; and

(c) That the treaty is open to accession by all powers of the world.

The Reply¹ of New Zealand merely associated that Government with the terms of the Note of "His Majesty's Government in Great Britain." Now the terms of that Note included references to the Treaties of Locarno by which New Zealand is not bound. This could hardly have been overlooked, and I think has some significance, for the Notes of Australia and the Union of South Africa omitted any mention of Locarno. Furthermore, the two Notes last mentioned also made no reference to the British Regional Doctrine. Accordingly, the understanding regarding that doctrine which Sir Austen Chamberlain expressed on behalf of "His Majesty's Government in Great Britain" seems also to be an understanding on the part of the Government of New Zealand.

Somewhat similar comment might be made as to the form of the Reply² of the Government of India, which

¹ Document 35.

² Document 36.

also merely associated that Government with the terms of the Note of the London Government; the form of the Note of India, however, is of minor importance. While India is a separate Member of the League of Nations, India is not a Dominion; in a sense the Government of India is distinct from the Government of "Great Britain and Northern Ireland and all parts of the British Empire which are not separate Members of the League of Nations," but it is distinct in nothing like the sense that a Dominion Government is distinct. While as a matter of record, the Government of India did not join in the Locarno Treaties, this is only as a matter of record; for India would *ipso facto* be involved in any action pursuant to the Locarno Treaties; and as to the British Regional Doctrine, India is there most vitally interested; so the Note of the Government of India may be regarded, not only in form but in fact, as adopting the terms of the London Note.

The Reply ¹ of Czechoslovakia, dated July 20, was signed by Dr. Beneš. From its opening phrases it appears that the American Note of June 23 was not only delivered by the American Minister at Prague, but was transmitted also to the Minister of Czechoslovakia at Washington.

That letter, as Dr. Beneš calls it, is viewed by him as a "commentary on the text" of the proposed Treaty, not only explanatory of the remarks of the French Government but also indicating "in detail the meaning and significance which the Government of the United States attaches to the multilateral treaty, in the event of the treaty's signature, ratification and enactment."

In the first place Dr. Beneš thanks the Government of the United States for its invitation; and here also are to be found some interesting references to the negotiations which were outside of the diplomatic correspondence.² Dr.

¹ Document 37.

² There is no doubt that the part played by Dr. Beneš in the negotiations was larger than appears from the record. He was in London when the British Note of May 19 was written and probably his views in favor of the Kellogg proposal had much influence particularly at Paris, where his opinion is regarded as valuable and important.

Beneš says that "from the beginning" Czechoslovakia had followed the negotiations between France and the United States "with the greatest sympathy and attention" and that his Government was ready at any time to become associated with "this noble undertaking." He then refers to the negotiations which he had carried on "during the last few months" with the United States, France and Great Britain, in which he had emphasised the political necessity of including other Powers and especially the Locarno Powers.

It thus appears that conversations had been going on at Prague and doubtless at other Capitals, including certainly Brussels and Warsaw, for a considerable time prior to Mr. Kellogg's Note and almost certainly prior to the date of Mr. Kellogg's speech, April 28. Indeed some of the references of that speech, particularly to the Locarno Treaties, may well have been influenced by those conversations.

That France and Great Britain, outside of the diplomatic correspondence, urged upon Mr. Kellogg the necessity of including the Locarno Powers among the Signatories appears from Dr. Beneš' statement that the United States "agreed fully in this with the other Powers;" and to the inclusion of the Locarno Powers the Czechoslovakian Government justly attributed "considerable political importance."

Dr. Beneš then goes on to say that it is clear that there is nothing in the treaty "in opposition" to the Covenant of the League of Nations, the Locarno Treaties or the Neutrality Treaties "or, in general, to the obligations contained in existing treaties" of Czechoslovakia. This is deduced "in accordance with the negotiations prior to the signing of the treaty, as well as by the changes made in the preamble from the original text and from the explanations contained in" the American Note of June 23.

The Note of Czechoslovakia then says that it appears from the explanations of Mr. Kellogg's Note that any violation of the proposed Treaty by one of the Parties would entirely free the others from their obligations to the Viola-

tor, adding, regarding self-defense, that is "furthermore apparent" that this right is not weakened or restricted by the proposed Treaty and that "each power is entirely free to defend itself according to its will and its necessities against attack and foreign invasion."

A very significant passage then sums up the conclusions as to the aim of the Treaty and as to the meaning of renunciation of war as an instrument of national policy:

As thus defined both in the text of the preamble and in the statement of your excellency's letter, the goal of the new treaty, according to the opinion of the Czechoslovak Republic, is to consolidate and maintain peaceful relations and peaceful and friendly collaboration under the contractual terms in which these have to-day been established between the interested nations. By their signature, the contracting parties will renounce war as an instrument of their national policy aimed to satisfy their selfish interests.

The policy of Czechoslovakia for the maintenance of the *status quo* could hardly be more plainly indicated; and viewed in this light it is natural that the Treaty should be regarded as "an immense benefit for humanity" and hardly less natural that Czechoslovakia "rejoices to see" that the Treaty is to be invested "with as universal a character as possible."

The views of Czechoslovakia are then said to be expressed as "confirming the explanations" of the American Note.

Even the conclusion of the Note of Dr. Beneš looks toward the *status quo*. In giving his reply in the affirmative "to the invitation of the Washington Government," he expresses thanks "for its generous efforts toward consolidating and maintaining world peace" and in his concluding phrase which mentions "the noble manifestation for world peace" made by the United States, he says that "the foreign policy of our country sees therein the realisation of the ends which it has pursued for ten years."

The Reply¹ of Tokyo is also dated July 20. Ac-

¹ Document 38.

knowledging receipt of the American Note of June 23 and its enclosures the Japanese Government sums up the most important observations of Mr. Kellogg; then, referring to the revised American Draft, mention is made of the fact that it "takes in the British self-governing Dominions, India and all parties to the Locarno Treaty, as original parties" and also of the inclusion in the preamble of

a statement which is directed to recognizing the principle that if a state goes to war in violation of the treaty, the other contracting powers are released from their obligations under the treaty to that state.

Then, after paraphrasing the enquiry addressed to the Japanese Government, the Note accepts the revised Draft of the Treaty in the following language:

In reply I have the honor to inform you that the Japanese Government are happy to be able to give their full concurrence to the alterations now proposed, their understanding of the original draft submitted to them in April last being, as I intimated in my Note to His Excellency, Mr. McVeagh, dated the 26th of May, 1928, substantially the same as that entertained by the Government of the United States. They are therefore ready to have produced instructions for the signature, on that footing, of the treaty in the form in which it is now proposed.

Following an expression of congratulation, the Note concludes with this declaration:

The Imperial Government are proud to be among the first to be associated with a movement so plainly in unison with the hopes everywhere entertained, and confidently concur in the high probability of the acceptance of this simple and magnanimous treaty by the whole civilised world.

It is clear beyond argument from the foregoing summary of the Replies of the fourteen Governments to the American Note of June 23 that all those Signatories to the Treaty regard the explanations of Mr. Kellogg's Note, including the text of the speech therein quoted, as being an authoritative

and binding commentary on the treaty text itself and as much a part of the meaning of the agreement as if the whole Note was one of the Articles of the Treaty; it is to be emphasised that with the exception of the Canadian Note, every one of the fourteen Replies lays stress upon the observations of Mr. Kellogg in connection with the expressed willingness to sign the treaty. The Notes do this in different forms; some of them go farther than others; and some lay emphasis upon one point and some on another, influenced by the particular interests of the particular country; but all of them take essentially the same position; particularly is this so if the fourteen Replies be read in the light of the previous correspondence, as they should be; and bearing this in mind, the Note of Canada is not a real but only an apparent exception.¹

I may go still further; not only is the American Note of June 23 an authentic and binding commentary on and interpretation of the text of the Treaty, to be read in the light also of the previous diplomatic correspondence, but also the fourteen Replies of the fourteen Governments are themselves a part of that authentic and binding interpretation and commentary; for to no expression in any one of them did the Government of the United States offer any objection.

Important as all this may be or may become hereafter, it was at the time relatively quite minor and inconsequential. The vital element of the fourteen Replies was that all of the Governments addressed had agreed to sign the Treaty as proposed by the Secretary of State.

¹ See particularly the earlier Note of Canada of May 30, discussed *supra*, pp. 76, 77.

CHAPTER XVII

THE RESULT OF THE NEGOTIATIONS

THE diplomatic exchanges had come to an end. The fourteen Governments addressed by the Department of State had agreed with the United States to sign a Multilateral Treaty for the Renunciation of War in the form proposed by Mr Kellogg in his Note of June 23. The Briand-Kellogg Treaty was assured. The preparation of a final French text and various formalities regarding the actual signing remained; and ratification and the attitude of the United States Senate were for a later future; but the first stage of the diplomatic history of the Treaty was concluded.

This result is justly to be regarded as a very real and a very great triumph for Mr. Kellogg. Since his original decision of December, 1927, he had unremittingly pursued the aim of a world-wide multilateral treaty for the renunciation of war in simple text; and he had reached his goal.

Another place of honor in the negotiations is to be assigned to M. Briand. His was the original inspiration; but the untrammelled position of the United States left her more free in the negotiations than was France. Mr. Kellogg had before him a blank page on which to write, so far as his own country was concerned; M. Briand had had to think of an already existing structure of peace, vital to France and to the maintenance of which he himself had so greatly contributed.

Looking back at the negotiations, it will be seen that, as so often happens, various questions debated had become of no practical consequence when the discussions were finished. An examination of each point raised from the time that

Mr. Kellogg, in December, 1927, first suggested a multilateral treaty in the form of M. Briand's Pact of Perpetual Friendship will show the extent to which this is the case here.

Universality of the Treaty. This question is first to be examined because it had a direct and important bearing on most of the others. Mr. Kellogg early visualised a treaty of six Great Powers to which it was hoped or expected most of the others would become Parties. The French aim was for a treaty substantially world-wide in scope at the time when it came into force. There were various intermediate shades of view; the French naturally had more anxiety about the participation of certain Powers in Europe than of others and the British thought more particularly of the Locarno Powers and of the Dominions and India. Technically an intermediate course was followed in making the number of original Signatories fifteen; but at the same time there was adopted the procedure of inviting all other countries immediately upon the signature of the Treaty to adhere thereto; and this will have the effect of making the Treaty of world-wide scope if and when it comes into force, some time in the early part of 1929. The intervening months will permit the Adhering Powers as well as the Signatory Powers to go through all the necessary formalities of ratification; so perhaps on the very day that the Treaty comes into force as among the fifteen Signatories and in any case almost immediately thereafter the Treaty will be one binding, not fifteen countries, but probably more than fifty, nearly all the world.

War of Aggression. Early in the negotiations regarding a multilateral treaty the French put forward a formula for renunciation of war of aggression as distinguished from the American formula (taken from the original French Draft Pact of Perpetual Friendship) for the renunciation of war as an instrument of national policy. I have previously discussed the possible differences in meaning between the two and noted the fact that the French did not insist on their formula. With a world-wide treaty, however, any

differences between the two formulas, even in the French view, became of little consequence; particularly is this the case when it is remembered that obligations under the Treaties of Locarno and under the Covenant of the League of Nations are safeguarded.

Furthermore, as will be shown in some detail hereafter, with a world-wide treaty and with its agreement of Article 2 for the settlement of all international disputes by peaceful means, any possible question as to the wording of the formula for the renunciation of war in Article 1 becomes of sentimental importance only.

Self-defense Mr. Kellogg's sweeping declaration on this subject made in his speech of April 28, which had apparently been stated in substance to the French Ambassador on March 1 and which was repeated verbatim and emphasized in the American Note of June 23, went at least as far as could be desired by any one. Indeed it put the subject outside of further diplomatic discussion; it is idle now to talk of any "reservation" having been made on this question of self-defense; for the declaration of Mr. Kellogg is an authoritative interpretation of the United States, put forward as explaining the meaning of the Treaty before its signature and not only acceptable to but binding on all Parties to the Treaty.¹

Violation of the Treaty. During the diplomatic discussions between France and the United States, the former suggested that it should be stated that if one of the Parties to the Treaty should contravene it, the other Signatories should be released from their obligations to the offending State. The German Government thought that this was self-evident. Mr. Kellogg stated in his speech of April 28 that such a conclusion followed as a matter of law and was wholly unnecessary of statement. The British Government thought that some means should be found of placing this understanding, as they called it, on record.

¹This statement and the following conclusions of this Chapter should perhaps be qualified by allusion to the position of Russia; as to this see p. 122, *infra*.

According to the view of Mr. Kellogg, any reservation on this point would have been not only meaningless, but of no legal import. If the Treaty as a matter of law in the form that Mr. Kellogg proposed it meant that in respect of a Violator thereof the other Parties were released from their obligations thereunder, a reservation containing such a statement would be mere superfluity. It was with some reluctance that Mr. Kellogg recognised the wisdom of an earlier and very famous diplomat who said in effect that things that go without saying usually go much better when they are said. So finally Mr. Kellogg yielded to the extent of placing in the Preamble a statement which he had declared to be wholly unnecessary; but a statement which is still to be regarded, despite its presence in the Preamble, as a substantive part of the Treaty.

In any case there is no reservation here. According to the Kellogg view there is a clause in the Preamble which unnecessarily expresses the legal effect of the Treaty without the clause. According to the other and perhaps more cautious view, the clause in the Preamble expresses what all the Parties thought should be the intent of the Treaty as a matter of common sense.

The Treaties of Locarno. To the French, the German and the British Governments the maintenance of the Locarno Treaties is a vital part of the existing international situation. One need only reflect for a moment on the conditions of 1924 to see that no one of the three Governments could under any consideration weaken or take the risk of weakening the agreements of Locarno. With this view Mr. Kellogg was always sympathetic; with the proposal of the French to cover the point by a clause in the Treaty safeguarding former treaty obligations he was not sympathetic; but the aim of the Locarno Powers to safeguard those arrangements, which was also the aim of Mr. Kellogg, was attained by including all of those Powers as original Signatories to the Treaty and, more important perhaps, by their unanimous expression of opinion, publicly shared by Mr. Kellogg in his speech of April 28, that there was nothing in-

consistent between the new Treaty and the former engagements. It may be recalled indeed that Mr. Kellogg went so far as to say that with the new Treaty "there would be a double assurance that the Locarno Treaties would not be violated by recourse to arms"; the violation of the one Treaty would be a violation of the other.

Here again there was nothing in the nature of a reservation by any Power.

The Covenant of the League of Nations. All of the fourteen Governments that finally took part in the negotiations with the Department of State are Members of the League of Nations. Most of them regard the League as an essential and by half of them at least the maintenance and support of the League are deemed a vital element of their foreign policy. Upon the proposal of a multilateral treaty for the renunciation of war the question had to arise whether there was anything in such a treaty as drafted which conflicted with the obligations contained in the Covenant, meaning here particularly the sanctions of that document. The French proposed the clause previously mentioned safeguarding former treaty obligations, in order to place the matter beyond argument. Various other Governments, notably that of Germany, took the view that there was clearly nothing inconsistent between the Covenant on the one hand and the proposed Treaty on the other; indeed that their aims and purposes were the same and that the new proposal would further the ideals of the League. This was in substance also Mr. Kellogg's view; and while the British concurred in this, they at first thought that the clause proposed by the French was desirable.

There was one point, however, on which the views of every Government concerned in the negotiations agreed, namely, that the obligations of the Covenant are not in any way affected by the multilateral treaty. An expression to this effect, differing of course in language, may be found in the communications of every one of the fifteen negotiating Governments

Here we have not a reservation, but an interpretation

of the Treaty agreed to in advance by all the fifteen Signatories.

Moreover, if the view of the German Government above alluded to is correct, and I think it is hardly open to doubt, the clause desired by the French would neither have added to nor taken from the legal effect of the Treaty as now written.

Here also, universality of the Treaty has a bearing. The Members of the League will all or nearly all be Parties to the Treaty, the "benefits" of which are "denied" to a Violator; taking into account also the general approval of the Treaty at the Ninth Assembly of the League of Nations, meeting shortly after its signature, it is beyond question that by unanimous assent of all its Parties the Treaty in no way qualifies the obligations of the Covenant of the League of Nations.

The British Regional Doctrine. The British Note of May 19 declared that there were certain regions the protection of which against attack was a matter of self-defense to the British Empire. In regard to them it was stated that the new Treaty was accepted upon the distinct understanding that freedom of action was not prejudiced. This declaration was repeated and emphasized in the British Note of July 18. It was not alluded to, even indirectly, by any other country except perhaps in the Notes of the Governments of India and New Zealand. Mr. Kellogg was wholly silent about it so far as the published correspondence discloses.

The explicit declaration of the British Government, relating primarily perhaps to Egypt, the Suez Canal, and the Persian Gulf,¹ is the nearest approach to a reservation to the Treaty which exists. This declaration is indubitably a part of the agreement after its tacit acceptance by the other Governments, quite as binding as would be express assent. The declaration was twice made before the signature of the Treaty and communicated to the other Signatories. Nothing

¹ Egypt, Persia and Turkey are among the States invited and expected to adhere to the Treaty.

is lacking either in honor or in law for the understanding to be complete under those circumstances.¹

It may be said that the British declaration is within the sweeping language of Mr. Kellogg regarding self-defense and I think it is. Certainly in the American view, self-defense, either with or without Mr. Kellogg's definition, includes the Monroe Doctrine, which was not mentioned in terms during the diplomatic correspondence although once alluded to by the British Government.

If the British Regional Doctrine is to be deemed (though not in the technical sense) an expressed "reservation" to the Treaty, then the Monroe Doctrine is a silent one. Perhaps the terminology makes little difference; but I am inclined on the whole to the view that both the declaration of the one Doctrine and the silence regarding the other are properly to be thought of as within Mr. Kellogg's blanket interpretation of self-defense.

On August 8 the press reported Secretary of State Kellogg as saying:

Interpretations to the multilateral treaty to renounce war are in no way a part of the pact and cannot be considered as reservations. The interpretations will not be deposited with the text of the treaty.

This statement is technically and formally correct if the words "part of the pact" are taken to mean part of the text of the pact. Formal reservations to a treaty are declarations made by the Parties which, in one way or another, are taken either textually or by reference into the instrument of ratification; the wording of the reservation thus becomes a part of the treaty text, even if it does not physically appear in the original signed document.

In the case of the Briand-Kellogg Treaty, if we look at

¹ The attitude of Russia here was mentioned above; and the statement of the text is also subject to the observations of the Governments of Egypt, Persia and Turkey in their Notes replying to the invitation to adhere to the Treaty. All three of those countries intimated that they were not to be deemed bound by the British Regional Doctrine in so far as it might relate to the areas of their direct interests.

the original document signed at Paris and at the various instruments of ratification, we will find no reference to any declaration of any of the Parties regarding the terms of the Treaty.¹

In this sense and in this sense only the "interpretations," as Mr. Kellogg calls them, are not a part of the Treaty and are not deposited with the Treaty.

However, the remark of Mr. Kellogg, above quoted, does not tell all the story. The interpretations and declarations, made in the diplomatic correspondence before the signature of the Treaty, and either agreed to or not dissented from, are just as binding and just as much within the meaning of the Treaty as if they were written into the Treaty text.

The circumstance that is controlling here is that these "interpretations" are all before the various legislatures and other agencies of government that ratify or consent to ratification of the Treaty; they are not statements made after the event; they are communications made not only before ratification, but communicated before signature to the Signatory Powers and immediately upon signature to the Invited Powers.

There is abundant authority for the assertion that interpretative Notes of the Parties under such circumstances are binding and, to be specific so far as the United States is concerned, are binding upon the United States though not mentioned at all in the Resolution of advice and consent by the Senate.

Reference might be made to the Notes exchanged between the British Ambassador (James Bryce) and the Secretary of State (Elihu Root) upon the signature of the Treaty of Arbitration with Great Britain on April 4, 1908, explaining some of the clauses of the Treaty. These Notes were communicated to the Senate for its information, upon the submission to it of that Treaty, but were not mentioned

¹ I assume here, for the purpose of the argument, an unconditional resolution of advice and consent on the part of the Senate of the United States, and unconditional instruments of ratification by the Parties generally.

in the Senate Resolution, the instrument of ratification or the *procès-verbal* of exchange, all of which were in the usual form.

The most striking instance, however, is that of our Treaty of Commerce with Switzerland of November 25, 1850. After that Treaty had been in force for over forty years, the Swiss Government, in 1898, contended that the clauses of the Treaty which provided for most-favored-nation treatment were to be considered as unlimited, although this contention was contrary to the well settled American rule of construction of such clauses. It appeared, however, from an examination of the original correspondence attending the negotiation of the Treaty that the Plenipotentiaries had reached an understanding waiving in favor of Switzerland the restrictive construction. A message to this effect accompanied the Treaty when it was submitted to the Federal Assembly of Switzerland for approval. The American Plenipotentiary, when he transmitted the Treaty to the Secretary of State, informed him of the understanding and his dispatch was communicated by the President to the Senate in connection with the Treaty.

Under those circumstances, the Government of the United States accepted the contention of Switzerland and Secretary of State Hay wrote to the Swiss Minister on November 21, 1898: "Both justice and honor require that the common understanding of the High Contracting Parties at the time of the executing of the Treaty should be carried into effect."

The result of the negotiations was, as I have indicated, a personal triumph for Mr. Kellogg; but it is to be added also that in the result the other Governments, particularly the French and the British, got everything that they deemed essential.

CHAPTER XVIII

THE MEANING OF THE TREATY

THE meaning of the Briand-Kellogg Treaty is to be deduced primarily from its text; but this text is to be read in the light of the previous diplomatic correspondence. As I have heretofore pointed out, the statements therein made by the Parties regarding the meaning of the Treaty *are* its meaning; this is not only a matter of law but a matter of common sense and of honor. Where before signing an agreement the Parties thereto in writings which they exchange declare its intent, their declarations are conclusive; for it is the intent of the Parties that must always be sought in determining the meaning of any agreement whatever.

Moreover the meaning attributed to the Treaty by its Signatories is also its meaning as to all other Powers subsequently adhering thereto. The diplomatic correspondence which led up to the signing of the Briand-Kellogg Treaty was officially called to the attention of the States invited to adhere thereto by the American Note of invitation of August 27, 1928; in this it was said that there would be transmitted shortly "a printed pamphlet containing the text in translation of M. Briand's original proposal to my Government of June 20, 1927, and the complete record of the subsequent diplomatic correspondence on the subject of a multilateral treaty for the renunciation of war." No Power adhering subsequently to the Treaty will be in a position to contend that this diplomatic correspondence and the expressions which it contains are not binding upon it as upon the original Signatories themselves.

The only exception to the legal conclusion which has just been stated would be in the case of an invited State

which adhered to the Treaty but which in connection with its adherence expressed some dissent from what had previously been written. Aside from the reserves of Egypt, Persia and Turkey in regard to the British Regional Doctrine, previously mentioned, the only country that has stated any qualification of its adherence or of its intention to adhere to the Treaty is Russia ¹

In the Note ² of the Soviet Government dated August 31, 1928, in which the intention of that Government to adhere to the Treaty was formally declared, the so-called "reservations" in the diplomatic correspondence leading up to the signature of the Treaty regarding the British Regional Doctrine, the Covenant of the League of Nations and the Treaties of Locarno were declared not to be binding on the Soviet Government. It was also intimated that still other "reservations," not referred to in detail, were similarly not "obligatory" for the Union of the Soviet Socialist Republics.

The attempt of that Note was obviously to bring about if possible the adherence of the Soviet Government to the Treaty and at the same time to permit that Government hereafter to give to the Treaty such interpretation as it may see fit for its own purposes. However, the Russian instrument of adherence dated September 6, is unconditional in form.

The meaning of the Treaty is here to be considered entirely apart from any attempted or possible qualifications thereof on the part of Russia.

From what has been said above and in the previous Chapters, the meaning of the Treaty might, I think, fairly be summed up something like this:

1. The Parties renounce war as an instrument of national policy.

¹ See, however, the Note of Hungary of October 6, 1928, which contained the following. "The Hungarian Government adheres to the proposal of the Government of the United States under the supposition that the Government of the United States as well as the governments of the other signatory powers will seek to find the means of rendering it possible that in the future injustices may be remedied by peaceful means."

² Document 42.

2. The right of self-defense remains unchanged, including expressly the British Regional Doctrine¹ and *sub silentio* the Monroe Doctrine.

3. A Violator of the Treaty ceases to be entitled to its benefits.

4. The Treaties of Locarno and the Covenant of the League of Nations remain unaffected by the new agreement.

5. The Parties agree never to seek the settlement of any international disputes among them except by pacific means.

6. The Treaty is perpetual.

Throughout the period of more than a year and a half of diplomatic discussions regarding the Briand-Kellogg Treaty there was hardly more than a casual reference to that part of the Treaty which is mentioned above under the fifth heading, the agreement never to seek the settlement of international disputes except by pacific means. The principle was occasionally alluded to in speaking of the renunciation of war "in favor of the pacific settlement of international disputes," as by Mr. Kellogg in his Note of December 28, 1927; but the language of Article 2, which embodies this portion of the agreement, was never brought into question at all². The meaning of the Treaty *as a whole*, including Article 2, was not argued and the entire diplomatic debate centered round Article 1 with its provision for the renunciation of war as an instrument of national policy.

That debate has been reviewed at sufficient length to preclude the necessity here of any further consideration of the distinctions between different formulas, the possible meanings to be ascribed to the phrase "war as an instrument of national policy", the right of self-defense and its limitations, the obligations of other Treaties and so on and the bearing of the diplomatic correspondence on the interpretation of the Treaty as to these various points.

¹ Here mention should again be made of the reserves of Egypt, Persia and Turkey.

² Except that it was mentioned in paragraph 5 of the British Note of May 19.

My purpose here, however, is to examine the meaning of the Treaty as a whole; and in my view such examination can result only in the conclusion that the vital and controlling part of the Treaty is its agreement of Article 2 to which the diplomats paid almost no attention.

Article 2 reads thus:

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.¹

Here we have a positive covenant (in negative form) for the settlement of all international disputes by pacific means only.

The negative form of the text cannot properly be set up as limiting its meaning. It would be entirely too narrow and technical to say that in such a world document as here considered it was intended that one Party, favoring the *status quo*, might simply remain passive, refrain from any attempt at settlement of the claim set up by the other State and decline any and all pacific means of adjustment which might be suggested. Clearly the proper construction is that the effort of either side to obtain a settlement of a dispute by pacific means is to be furthered by the cooperation of its adversary in the controversy.²

It may then be objected that my statement goes too far and that the covenant is not to settle all international dis-

¹ The French of this is.

Les Hautes Parties Contractantes reconnaissent que le règlement ou la solution de tous les différends ou conflits, de quelque nature ou de quelque origine qu'ils puissent être, qui pourront surgir entre elles, ne devra jamais être recherché que par des moyens pacifiques.

The word "reconnaissent" is perhaps not as clearly contractual as "agree", but the opening words of the Article originated in the American Draft of April 13, 1928; so the French here is a translation of the English and is not to be construed as altering its sense or lessening its force Cf. the French and English texts of Article 20 of the Covenant.

² Of course, as often happens, both sides might be content to let the matter rest indefinitely unsettled. Such delay in procedure is perfectly consistent with even the most complete agreement for obligatory arbitration.

putes by pacific means, but merely to *seek* such settlement.

The result, however, is the same. If each of the two (or more) Parties to a dispute seeks a settlement thereof by pacific means, such pacific settlement is bound to be found; it is impossible at the present time with the existing machinery of international relations for any two countries trying to do so to fail to reach a pacific settlement of a dispute between them; various arbitration tribunals, the Permanent Court of International Justice, the League of Nations, Commissions of Inquiry and of Conciliation, the mediation of other Powers, all these are available; and the experience of the years since the War has shown that such facilities are increasing, not only in extent, but also, which is much more important, in their influence and effect upon public opinion.

I used above the expression *all* international disputes for two reasons; the language of the Article is all-inclusive as to the character of the disputes in saying "of whatever nature or of whatever origin they may be"; and the present Treaty is to be substantially world-wide; so it will be impossible hereafter for any serious international dispute to arise which is not within the terms of the covenant of Article 2 of this Treaty.

In almost all the official and unofficial writing about the Briand-Kellogg Treaty, the cart has, mentally, been put before the horse. The reasoning seems generally to have been that you had first the renunciation of war in some form and then, in place of the war renounced, the pacific settlement of international disputes. This reasoning seems to me even to be behind the phrase which speaks of the renunciation of the one in favor of the other. We give up war and we get pacific settlement of disputes instead, according to this notion; hence all the argument and wonder as to just what was being given up, this kind of war, that kind of war, self-defense, sanctions and so on.

Now, to change the metaphor, the picture is upside down; for if you have pacific settlement of international disputes, it is renunciation of war that automatically *follows* from

such pacific settlement; or more properly speaking, with such pacific settlement, there is no renunciation of war because there is no possibility of any war to renounce.

Let us take the Treaty as comprising Article 2 only and let us suppose that it is carried out, for that of course must be the first supposition in considering the meaning of the Treaty. In such consideration we are thinking of what the Parties agree to do and of what the performance of the agreement means. Now, with Article 2 of the treaty standing alone and performed, I ask, what becomes of the discussions regarding Article 1? and I answer that they are meaningless. If international disputes "of whatever nature or of whatever origin they may be" are settled by pacific means, then no possible point in the interpretation of Article 1 could ever arise; for if the Parties settle their disputes by pacific means, the Treaty has precisely the same consequences as if it contained nothing at all as to the renunciation of war.

But it may be said, suppose the Treaty is broken, what then? The conclusion is just the same. The Treaty being broken, was broken in point of time, so to speak, *first* as to Article 2. This is so even if it be assumed that the Treaty can *only* be broken by resort to war by one of the Parties against another; obviously the one or the other of the Parties, perhaps both, have failed to seek the solution of the dispute between them by pacific means and have chosen other means; but the obligation to employ pacific means is, to borrow a phrase of Mr Kellogg, in another connection, a primary obligation.

Suppose there are two Parties to an international dispute; if both of them seek to settle it by pacific means, the dispute will be settled and there will be no war. If one of them (and perhaps both of them) attempts to settle the dispute by means *not* pacific, then war results and the Treaty is breached; but in determining the breach we look to Article 2, rather than Article 1. The Treaty is broken by the Party (conceivably, though not likely, both of them) that did not try for a pacific settlement.

Curiously enough, this all goes back to the definition of

the "Aggressor" made in the Fifth Assembly of the League of Nations by M. Herriot; the Aggressor, he said, was the Party that refused arbitration and resorted to war; so here, after four years, the same point is reached in the Briand-Kellogg Treaty in saying that the Parties agree to the pacific settlement of all international disputes and renounce war as an instrument of national policy.

Thus the Briand-Kellogg Treaty is a treaty for the "outlawry of war" only if we use that American expression in its popular sense as meaning prevention of war or ending of war, the sense in which it is occasionally employed in the diplomatic correspondence. If, however, we think of "outlawry of war" as having the significance ascribed to it by certain writers and others who have put forward plans for an international code to make war "illegal" or a "crime", then the Briand-Kellogg Treaty is not at all a treaty for the "outlawry of war"; the Briand-Kellogg Treaty is intended to prevent war in any case among its Parties by their own solemn agreement, just as an arbitration treaty is intended to prevent war in (generally) some cases between its Parties; but neither the one Treaty nor the other sets up or purports to set up or to "codify" a principle or rule of international law.

A breach of the Briand-Kellogg Treaty would of course be contrary to international law as would be a breach of any treaty, a commercial treaty or an extradition treaty, because it would be a violation of the agreement; but a war declared by one of the Parties to the Briand-Kellogg Treaty upon a State not a Party thereto, however wilful and without reason the war might be, would not be a breach of international law at all.

Now, if we assume the Briand-Kellogg Treaty to be completely universal as well as perpetual, the distinction between a breach of a general rule of international law, on the one hand, and the breach of such a treaty, on the other, may seem to be merely technical; but it is not; it is real and substantial. A breach by State A as against State B of a universally accepted rule of international law would

not give to a third State, say the United States, any ground whatever for protest or objection. The United States, for example, could not even write a Note about the seizure of a neutral ship by a belligerent in time of war, no matter how arbitrary the act might be, unless the ship or some of the cargo were American; the affair would be *res inter alios acta*. But if the act of A against B is contrary to a treaty to which the United States is a Party, then there is ground and right for protest or even for more than protest.

So the meaning of the Treaty may be expressed much more summarily than was done at the opening of this Chapter; what the Treaty means is that the Parties to it agree to the peaceful settlement of all international disputes and that they make this agreement in perpetuity.

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CHAPTER XIX

THE CONSEQUENCES OF THE TREATY

To attempt to forecast all the consequences of the world-wide and perpetual Briand-Kellogg Treaty one would have to be either a very rash or an inspired prophet; but perhaps we may look a little way ahead.

With this Treaty, the weight of armaments, the menace of force, will no longer lurk in the background of diplomatic intercourse. Negotiations will cease to be one method of seeking a result otherwise to be constrained. "War . . . shall no longer figure in the Diplomatic Notes which may pass between nations. No implication will be raised in any Notes of threats of war. All that is to disappear entirely."¹

Also and inevitably the Treaty will add enormously to the prestige and solidity of the League of Nations. One should not pay too much attention here to the emanations from Washington to the effect that the Treaty does not in any way tie the United States up to Europe or to European controversies or to the League.² It is hardly possibly even in theory to imagine a violation of the Briand-Kellogg Treaty by a Member of the League without such violation being at the same time a breach of the Covenant; and it is certainly not possible to envisage a breach³ of the Covenant

¹ The Marquess of Reading in the House of Lords, May 15, 1928.

² The Secretary of State was reported to have said on July 21: "The multilateral treaty requires no affirmative action of any kind on our part, and will no more involve the United States in European affairs nor in the League of Nations than the arbitration treaties which we have signed with most of Europe" Cf. the remarks of Dr. Benes on October 4: "Those problems [the revision of the Dawes plan, the evacuation of the left bank of the Rhine and the Conference on the Limitation of Armaments] were closely linked with the negotiations concerning the Kellogg Peace Pact."

³ i. e. a breach by resort to war.

by a Member of the League which would not at the same time be a breach of the Briand-Kellogg Treaty; and not only a breach of our Treaty as against some other Power, but a breach of our Treaty as against the United States; for under the Treaty, any Power that breaks its promise to another to settle disputes between them by pacific means, breaks also its promise to the United States, which in the case supposed is a promise to settle its disputes *with that other Power* (and not merely those with the United States) by pacific means.

If we look forward to a possible or threatened breach of the Treaty in the future, it is not the views of Mr. Kellogg, emitted pending the ratification of the Treaty and during a Presidential campaign, that will be controlling; it will be the opinion of the then director of the foreign policy of the United States, the President for the time being.

If the international sky hereafter should be untroubled by any cloud, it would be unnecessary to think at all about the consequences of the Treaty; for in such case it might either be supposed that the Treaty had brought about a millennium or that one had arrived of itself, with this and every other Treaty immaterial; but any such dream is a counsel of imagination; we know that international crises will arise hereafter as they have heretofore and it will be at the time of some crisis that the Treaty will be tested.

Let us suppose such a crisis as being at hand. The peace of the world is threatened by some urgent and serious and perhaps bitter international dispute; the machinery of the League of Nations will be in motion; there is a threat or a danger of a breach of the Covenant; at the same time there is a threat or a danger of a breach of the Briand-Kellogg Treaty.

Inevitably the Government of the United States will be consulted, if not directly by Geneva, certainly by the Powers most influential at Geneva. Whether such consultation comes in the name of the League of Nations or whether it comes in the name of Members of the League

of Nations as Parties with the United States to the Briand-Kellogg Treaty, is quite immaterial; it might take the form of discussions at Washington, or telegraphic exchanges, or a representative of the United States might sit with the Council; the consultation itself is certain and in any form it will be asked in fact by those Powers which are trying to preserve peace.]

No Government of the United States could be indifferent to such an appeal; any threatened breach of a treaty obligation made to the United States must be a matter of grave concern, above all when peace is at stake; of course there would be no legal duty on the part of the United States to intervene; still less would there be any obligation on the part of the United States to use threats; and I do not speak of sanctions because I am considering intervention before a breach and not afterwards; but no Government of the United States could refuse to use its influence in such a case in cooperation with the League of Nations to preserve peace and at the same time to preserve the sanctity of our own Treaty.

Moreover, so far as we can see now, there is no Power in the world which could seriously afford to resist at the same time the influence of the United States and the persuasion of the Council of the League; at least it would be a very rash and uncontrolled Government which would take such a course and defy the rest of civilisation and the organised public opinion of the world.

But suppose this happened; it seems to me rather remote but perhaps it is not impossible. Some headstrong Power, rejecting alike the advice of the League and the counsel of the United States, refuses arbitration or any other peaceful settlement of its controversy and goes on to war. The defiance of the Covenant and the breach of the Briand-Kellogg Treaty would be simultaneous.

It is quite impossible to suppose that under such circumstances the United States would stand wholly aloof, issue the usual proclamation of neutrality and treat the Power that had rejected our advice and broken our Treaty

as being in all respects on the same footing as any other friendly Nation.

Just what course the Government of the United States would take in such a case, it is unnecessary to attempt to predict. The breaking of diplomatic relations with the Violator, a policy of benevolent neutrality with the other side and various other more or less drastic steps, all falling short of war, might be imagined; but an attitude of supine indifference to our own Treaty is unimaginable.

Following the Covenant, one of the consequences of this Treaty is that neutrality in case of war, in the hitherto accepted sense of neutrality, is ended.

This prospective consequence of the present Treaty is itself, in the international world as we know it, one of the strongest guarantees of its remaining inviolate; to put it bluntly, there is no Power which would now take or dare take the risk of the possible attitude of the United States in case of a breach of the Treaty, not only although, but even more specially because, the exact form and character of that attitude cannot be foretold in advance; the unknown possibility may be the most dangerous of all.

The Treaty links the United States to the League of Nations as a guardian of peace; it makes the aim of that institution and the aims of our foreign policy in the largest sense identical. It is not too much to say that the Treaty in fact, though not in form, is a Treaty between the United States and the League.

It has often been said that the Treaty has no sanctions, no means of enforcement. Textually this is correct enough; but the linking up of the United States with the League of Nations, the conjunction of the Briand-Kellogg Treaty with the Covenant, means that the sanctions of Article 16 of the Covenant have behind them the moral acquiescence of the United States; so that, lurking in the background of those sanctions, is the possible, though unexpressed but still potential attitude of the United States toward a Power that flouts its promise. This is a very true sanction.

It has well been pointed out by various thinkers that

the real value of sanctions lies, not in their application, but in the possibility of their application. The sanction which is applied is one that has been risked and is met; the sanction whose application is so dreaded that its application does not arise is the one that is momentous; and this, in my view, is the momentous consequence to be expected from the combination of the stated sanctions of Article 16 of the Covenant with the unstated position of the American Republic.

Now of course all this will be doubted and perhaps even will be denied; and I do not intimate that the consequences here mentioned will become immediately apparent upon the going into force of the Treaty; it may even be that they are not anticipated by some of its authors. This has often proved true in respect of great political documents, national and international; but none the less the political consequences of any such document are inevitable; they march along with the development of human society and they do not at all halt or change their course by reason of the opinions of those who signed the paper.

Another question which, if it had not affected and did not bear upon the relations between the United States and the British Empire would be minor, is also disposed of by the Treaty. This is the question of the Maritime Law of the future. With the United States outside the League of Nations, the application of the economic blockade of Article 16 of the Covenant, primarily such an application by the British Fleet, had in it disquieting possibilities of friction between the two great English-speaking peoples. While this situation has existed since the Covenant came into force, it was brought more into public discussion in both countries at the time of the Geneva Protocol of 1924; but with the Briand-Kellogg Treaty the old situation is ended and a new condition of affairs takes its place. Any possible action by the British Fleet under the Covenant would *ipso facto* be action against a Power which had flaunted the Government of the United States; the sympathy and support of the American Government indubitably could not be

opposed to the principle of the sacredness of our own agreement. I repeat that the Briand-Kellogg Treaty, following the Covenant, is an end of the old ideas of neutrality and is accordingly an end of difficulties about Sea Law. The prophetic words of Woodrow Wilson, now substantially embodied in Article 11 of the Covenant of the League of Nations, have come to a fuller realisation:

Any . . . threat of war . . . is hereby declared a matter of concern . . . to all the Powers . . . and those Powers hereby reserve the right to take any action that may be deemed wise and effectual to safeguard the peace of nations.

Under the Briand-Kellogg Treaty the United States becomes one of those Powers that have that right.

It is not possible for any student of international relations to fail to realise that during the last few years the attitude of the United States has been one of *rapprochement* with the League of Nations. Certainly it is an important political fact that the principle of a league of nations was advocated in the United States by some of the leading personages of the Republican Party before it was taken over by the late President Wilson. Furthermore, it is historically true that, according to all precedent and past attitude, it would have been the Republican rather than the Democratic Party that might have been expected to advocate such a policy. The unfortunate years of 1920 to 1923 have been followed by a gradually shifting attitude,¹ of which the Briand-Kellogg Treaty is the latest development.

It was stated in the Press, and so far as I have seen without contradiction, that before making his proposal of December 28, 1927, Mr. Kellogg consulted Mr. Root and Mr. Hughes; and it is of no little significance, even internationally, that Mr. Hughes has recently accepted a substantially unanimous election to the Permanent Court of

¹ Mr. Kellogg's expressions regarding the Covenant and the League during the course of the negotiations are in themselves evidence of the extent of the change. Mr. Kellogg's personal opinions may not have altered at all since his days in the Senate; but, as Secretary of State, his utterances now represent the views of the Administration.

International Justice. It is true that Mr. Hughes is best known as a distinguished American who has held three of our highest political positions and who very nearly attained the highest of all. It is also true, however, that Mr. Hughes, in and out of his terms of office, has been and is one of the most stalwart of Republicans; he would to-day be perhaps generally regarded as the leading Republican in active private life.

It is to be remembered in this connection that Mr. Hughes as Secretary of State favored American membership in the Permanent Court of International Justice and proposed reservations to the Statute of the Court which, if accepted, would have brought about American participation. Now, with the Briand-Kellogg Treaty and with Mr. Hughes a Judge of the Permanent Court, I venture to say that American support of that institution is as much a certainty as any future political event can be.¹

Indeed I am quite willing to go farther in my prophecy. The question of American membership in the League of Nations has always in my mind been a question of the continued existence of the League itself. In the early and precarious years after 1920 that existence might have been doubted, but no longer; for the maintenance and support of the League of Nations have become a fundamental part of the foreign policy of three, if not four, Great Powers and of many others of very real importance; and this condition was one existing before the Briand-Kellogg Treaty. The League of Nations had become the indispensable element in the whole structure of international relations; now, with the Briand-Kellogg Treaty, the League becomes, so

¹ The reservation in the Senate resolution of January 27, 1926, which has thus far prevented American adhesion to the Statute of the Permanent Court of International Justice, related to advisory opinions. The Ninth Assembly of the League of Nations, by a resolution of September 24, 1928, proposed a study of the question whether such opinions may be requested by a simple majority of the Council (or the Assembly). For a discussion of the possibilities of further negotiations with the United States, see *The American Reservations and the Permanent Court of International Justice*, by Professor Manley O. Hudson in *American Journal of International Law*, Vol. 22, p. 776.

to speak, more indispensable, and its continuance more inevitable, than ever. It is not my view that the Briand-Kellogg Treaty will bring about American membership in the League, but merely that the Treaty facilitates such entry and advances its date.

What will be the consequences of the Briand-Kellogg Treaty in respect of the question of security? Objectively, the security of a State has many elements, difficult to define or even completely to enumerate; subjectively, security is very largely a national state of mind. As the importance of the Treaty comes to be realised and as its effect upon international affairs generally and upon the relation of the United States to the League of Nations in particular, comes to be appreciated, the feeling of security in Europe and in the Far East will certainly be increased. This must take place gradually, for apprehensions, some of which have their roots in generations or centuries of history, are not easily dispelled; and there are some fears, springing from more recent violence, which will require time to dissipate; but the coming change is sure.

One of its evidences will be found in the field of disarmament. The logic of the Treaty and of its consequences is here inevitable. The movement for disarmament which was proclaimed as an ideal in the Treaty of Versailles and which was recognised in the Covenant as an essential to peace has hitherto made slow progress; but it has never halted and the question is to-day perhaps the most insistent in world discussions. With the cooperation of the United States, the subject has become one of continuous negotiation under the auspices of the League of Nations and it must remain in that field of negotiation until agreement has been reached.

With the consequences that I have assigned to the Briand-Kellogg Treaty, success in the efforts toward general disarmament cannot fail to be attained. Here again I do not mean anything like immediate or complete success. Perhaps that would not be desirable even if it were possible. The change must come slowly, not in advance of and perhaps

not even concurrently with the increase in the feeling of security; but recognition of the realities of the Treaty will be of very great help in forwarding the disarmament efforts of the League.

Indeed, in this matter of disarmament some result in the not distant future may be looked for. The differences of view which made the Naval Conference of 1927 a disappointing failure were not so vital as to prevent their re-examination in the light of the new Treaty. A further accord among the Naval Powers is to be expected¹ and probably with it some agreement as to other armaments; and when the Washington Treaties come to be revised in 1931, that revision should take place in an atmosphere and with results very different from those of ten years earlier.

It was indicated above that the vital and controlling part of the Treaty is its agreement in Article 2 for the settlement of all international disputes, of any kind or nature, by peaceful means only. Some critics have objected to the incompleteness of the agreement in that the "peaceful means" are not defined or specified; no tribunals are mentioned, no methods of solution, no procedure.

The objection made on the ground stated is superficial. I pointed out earlier in this Chapter that in the matter of sanctions the Treaty is to a large extent implemented in advance by the Covenant. Similarly here as to the peaceful settlement of international disputes, the Treaty is implemented not only by the Covenant, but also by a great number of other arbitration and conciliation agreements, the growth of which, both in quantity and in quality, has been a notable feature of the treaty-making of the last few years; and additions to the number of such engagements are constantly being made²

Though the variety of peaceful means which may be used

¹The recent flurry regarding the Anglo-French program for the Preparatory Commission on Disarmament (mistakenly considered by some to be a naval agreement) makes this forecast all the more probable.

²The "model" Conventions for arbitration and conciliation, proposed by the Ninth Assembly of the League of Nations (September, 1928) deserve special mention in this regard.

in the settlement of international disputes is very great, still, and despite every possible diversity of procedure, they may all be put into four classes:

Direct Agreement: The method of diplomatic negotiation is that generally and with a very high percentage of success employed in the ending of almost all minor differences between nations and very often in those of greater and even of momentous importance. The Foreign Offices argue out their case with each other to a conclusion. With some intelligence on both sides and with some give and take here and there, this is a result often to be expected in the course of the constantly increasing extent of international contacts. Trade and business matters, which now-a-days occupy so much of the attention of diplomacy, are better and more easily adjusted by the Parties than by others, when adjustment is possible at all.

One of the consequences of any agreement to settle all disputes by pacific means only, is inevitably to increase the importance of the diplomatic method of settlement.

For if diplomacy is not to reach a definitive composition in a given case and with force ruled out, some sort of a hearing by others is sure to follow, perhaps conciliation or mediation or arbitration or litigation; and unless very certain of its position (and in the absence of special circumstances) the prospect of a hearing of any nature makes *any* disputant a little more yielding than before.

This is familiar psychology in ordinary affairs and internationally finds illustration in the history of the Council of the League of Nations. Case after case on the agenda of that body has gone back to the Parties for negotiation and adjustment between themselves; not the action of the Council but the existence and the possible action of the Council caused the settlement.

So here, when a proceeding of some sort must follow disagreement, agreement will come in cases which would otherwise take a different course.

Delay: By delay I mean the dragging along of the controversy without any settlement at all. It seems contradic-

tory to call this a method of settlement; yet it is. The Parties state their respective positions; there follows either an express or a tacit *modus vivendi* and neither side presses its case farther. If the resultant *status quo* continues long enough, the dispute very often disappears. If not, it may take some other course of settlement or it may even, owing to change of circumstances, revive and become acute; but still delay is to be regarded as one method of pacific settlement of international disputes.

When lapse of time is thought of in this connection, it is to be remembered that a few years count less in international relations than in others. The old difference between Great Britain and Argentina as to the Falkland Islands still exists, at least on paper, though dating back to 1833.

Persuasion by others: Under this heading are to be included good offices, mediation and conciliation and all other forms by which agreement is reached through the friendly efforts of third Parties or individuals. It is to be emphasised here that the result to be reached is an agreement between the Parties themselves; those who persuade do not decide; and instances in diplomatic history of such persuasion resulting in agreement are very numerous.

Since the World War, the most notable change that has come about in the procedure of official international intercourse is the substitution of meetings for correspondence. Use of the conference method has increased to a remarkable extent and its common sense basis warrants the belief that the change is permanent. Such diplomatic meetings make for publicity in international affairs; and it is sometimes hard to say whether the agreements reached are the result of persuasion or of direct negotiations between the Parties.

Persuasion is primarily to be employed for the settlement of disputes referred to the League of Nations; for under the Covenant, the Council in such case has first of all to "endeavor to effect a settlement of the dispute" between the Parties.

And within this classification of persuasion by others may also be placed, I think, Commissions of Inquiry of various

kinds having generally the duty of making impartial findings of fact; for while the members of such bodies do not themselves perhaps have directly the duty of endeavoring to bring the Parties to an agreement, the conclusions which are the result of their investigations may well have that tendency.

Arbitration: Using the word in a very extensive sense, arbitration may be taken to include all cases in which the merits of an international dispute are considered and passed on either in whole or in part by a tribunal of any kind.

In many instances it is the duty of such a tribunal to render a final and binding decision; the judgments of the Permanent Court of International Justice and the awards of arbitrators, whether appointed under The Hague Conventions or by other agreements, are of this nature; and such judgments or awards may result either from a particular agreement of arbitration relating to an existing dispute or from a more general agreement providing for the arbitration of disputes thereafter to arise, such as the so-called Optional Clause of the Statute of the Permanent Court.

However, at least for the purpose of classification, I think there may also be included under this heading, certain procedures where the conclusions of the tribunal are not, strictly speaking, final. Such are the advisory opinions of the Permanent Court of International Justice and the recommendations of the Council of the League of Nations when unanimous (except for the Disputants). The advisory opinions are not judgments and the recommendations are not awards; but in each case the moral authority attaching to them is so great that, as experience has shown, any State finds it very difficult if not impossible to avoid their acceptance; and upon acceptance, for example, of an advisory opinion of the Permanent Court, its effect is hardly to be distinguished from that of a judgment.

Certain Governments, notably the American and the British, have been reluctant hitherto to enter into any treaties of obligatory arbitration, that is, agreements looking

to a binding decision or award to be made by a specified tribunal in respect of disputes subsequently to arise. Thus the British have been unwilling to accept the so-called Optional Clause of the Statute of the Permanent Court of International Justice, which provides in advance for the jurisdiction of that tribunal in certain specified classes of controversies. The Arbitration Treaties of the United States have always excepted certain subjects from their scope and have furthermore always provided that a special treaty must be entered into in each case of arbitration setting forth the terms of the submission. Thus the new Treaty of Arbitration between France and the United States signed on February 6, 1928, which is our present model for such treaties, not only provides for a special agreement in each case of arbitration, to be ratified by the two Powers like any other Treaty, but also limits the differences to be arbitrated to those which are "justiciable" in their nature, excludes four classes of cases from the provisions of the Treaty even thus limited and leaves open for future agreement in each case the arbitration tribunal which is to act.

Now Article 2 of the Briand-Kellogg Treaty does not in terms refer to arbitration. The expression "pacific means" includes arbitration and judicial settlement but includes all other forms of pacific settlement as well. In contrast, however, with all arbitration treaties of the United States, it has no exceptions whatever of classes of disputes. In this regard the language is similar to that of the Bryan Treaties of the United States which provide for Commissions of Inquiry in every possible kind of dispute. Those treaties, while till recently limited to certain Powers and generally allowed by the Department of State to become obsolescent, have now been readopted as a part of our foreign policy and revived; and such treaties are being increased in number by negotiations with various countries other than those with which they are now in force.

Taken with our Arbitration Treaties and our Bryan Treaties, Article 2 of the Briand-Kellogg Treaty is thus a forward step for the United States. Our procedure

in the peaceful settlement of international disputes is now largely, though not wholly, provided in advance. If such a dispute is to go to arbitration under the rather limited clauses of our Arbitration Treaty with the other Power, a new agreement is drawn up for submission to the Senate and subsequent ratification, setting out the scope of the submission, the tribunal and so on. There is almost no doubt that the Senate would consent to any such agreement of arbitration.¹ If the dispute were not thus submitted to arbitration, it would necessarily be examined by a Commission of Inquiry under the Bryan Treaty with the other Power; and the provisions of the Bryan Treaties for a status of peace at least during the investigation and until the Report of the Commission are now supplemented by the Briand-Kellogg Treaty, so that even thereafter only pacific means of settlement are to be employed.

If we read Article 2 of the Briand-Kellogg Treaty in conjunction with the vast body of existing arbitration treaties and other agreements for the peaceful settlement of international disputes, it will be seen that the combined structure, while not complete, is very imposing. The objection which I above mentioned is thus merely an objection to the incompleteness of this structure. It was perhaps to this in part that M. Briand alluded in his speech upon the occasion of the Signature of the Treaty when he said:

Peace is proclaimed. that is well; that is much; but it still remains necessary to organise it. In the solution of all differences, right not might must prevail; that is to be the work of to-morrow.

Certainly there does not now exist a complete and logical scheme of agreements in advance for the methods of the settlement of any and every possible international dispute; but this fact is not of serious importance; for not only has

¹ See the remarks of Mr. Kellogg on this point in his address before the Council on Foreign Relations at New York on March 15, 1928.

the principle of settlement by peaceful means of *all* international disputes been accepted but this principle has been carried into a binding agreement; and, here as elsewhere, logical and formal precision in international relations is much less important than results. While various countries prefer to await the test of experience in respect of existing tribunals and to adapt their agreements as to methods of settlement to varying circumstances and to their relations with other countries as time goes on, it is no longer to be doubted that such agreements will be available when needed.

It is moreover to be emphasized here that within the League of Nations there is now in theory an almost inclusive and probably in reality a quite inclusive procedure for the peaceful settlement of all disputes between its Members.

All such disputes must, under the Covenant, go either to some form of arbitration or judicial settlement or to the Council¹ of the League. It is the duty of the Council first to seek to bring the Parties to an agreement; and otherwise to make such recommendations² as are deemed just; and these provisions are nearly complete; for while domestic questions are not, if one Party objects, within the jurisdiction of the Council under the clauses to which I have alluded, they are still within the scope of Article 11. The other exception is the so-called "gap in the Covenant," the possibility of a divided Council (its members other than the Disputants); in such case the Parties to the dispute regain liberty of action after a stated interval. The history of the League shows that the just view is that such a failure of unanimity could not occur in fact; but if it could, the provisions of the Covenant for liberty of action in such case are now supplemented by a general agreement of the Members of the League for a settlement by "peaceful means"; just as they had previously been supplemented as among many Powers by other agreements of arbitration or conciliation.

Finally there should be mentioned the relation of the

¹ Or the Assembly.

² Such recommendations are, technically, not a binding decision.

Briand-Kellogg Treaty to the Statute of the Permanent Court of International Justice.¹

The Optional Clause of that Statute, which has been accepted by a very considerable number of States, though as yet only by one Great Power, Germany, provides in advance for the obligatory jurisdiction of the Court in certain cases, namely:

- (a) The interpretation of a Treaty.
- (b) Any question of International Law.
- (c) The existence of any fact which, if established, would constitute a breach of an international obligation.
- (d) The nature or extent of the reparation to be made for the breach of an international obligation.

Clearly the question of a violation of the Briand-Kellogg Treaty comes within the language quoted; so States accepting the obligatory jurisdiction of the Permanent Court thereby provide in advance for a binding and conclusive determination of the Aggressor. In this regard the conjunction of the two Treaties presents a wholly novel and unprecedented advance in international relations. To submit to a tribunal for decision the question whether one State or the other (or perhaps even both) has resorted to war in violation of its agreement is to bring sovereign States within the rule of law in a new sense. Nothing could more vividly show the growth of the international social contract. The authors of the Covenant did not dare to go so far in 1919; at most they prepared the way for the advance.

It is true, but it is no answer to what has been said, that many States have not yet accepted this obligatory jurisdiction of the Permanent Court. Many have and others will, and in a not far distant future such jurisdiction will generally be a matter of course.

The important thing here is not the exercise of such jurisdiction of the Permanent Court in such vital issues; the im-

¹I am greatly indebted, in respect of the following observations, to an article by the learned French jurist, Professor René Cassin, in the *Journal de Genève* of August 8, 1928.

portant, the vital thing is the existence of such jurisdiction; for, as and when it exists, it will not be called on; the fact that the Permanent Court might in law and as a matter of right be summoned to decide upon an allegation of breach of this antiwar Treaty will *ipso facto* be one controlling circumstance to prevent the occurrence of the breach.

The process of organizing a complete system for the pacific settlement of international disputes is one that is actually in progress; the world is here not static but in motion. The recent and prospective additions to our own Treaties, the "model" Conventions proposed at the Ninth Assembly of the League of Nations and the coming Pan American Conference on Arbitration to be held at Washington in December, are evidences of the movement; and the fact that the work is not finished, that the procedure is not as yet complete and established, important as it may now seem, becomes almost lost in the perspective as we look ahead.

The consequence here of the Briand-Kellogg Treaty, taken, as it must be, in conjunction with the Covenant and other Treaties, is that the cause of international arbitration (again using that word in its broadest sense) and of pacific settlement in all its diverse forms, is immeasurably advanced.

By a different road from that envisaged in 1924 the world has moved on toward the ideals of the Covenant and of the Protocol of Geneva: Arbitration, Security and Disarmament.

CHAPTER XX

FOREVER AND FOREVER

PERHAPS the most striking feature of the Briand-Kellogg Treaty is one that is not written in its text. The Treaty is perpetual. It contains no clause of limitation, no provision for determination or denunciation. It lasts for all time, except for the theory that all its Parties might (as they never all would) agree to end it. Indeed the Preamble indicates that the Treaty would not be terminated or abrogated by its violation, even as to a delinquent Party; the Aggressor is merely deprived of its benefits.

It is interesting here to recall that the idea and the very language of the Treaty are adapted from the proposal of M. Briand which he called a Pact of Perpetual Friendship.

The significance of such perpetuity is almost impossible of overstatement. In recent times, treaties without a limitation clause are becoming almost unknown. Experience, often painful experience, has shown that every international agreement looking to the future should be subject to revision. Treaties nowadays relate to an increasingly wide field of international relations; and it passes the wit of the wisest of mankind, including diplomats and statesmen and politicians, to write such agreements that without change will suit the shifting conditions of the unknown future.

Indeed one of the rather vague doctrines of international law known as *rebus sic stantibus* assumes that treaties are made with the implied condition that the essential circumstances under which the agreement was concluded must continue if the treaty itself is to continue.¹ There is perhaps

¹ For a highly illuminating discussion of this doctrine see The Permanence of Treaties, by Sir John Fischer Williams in *American Journal of International Law*, Vol. 22, p. 89.

an inherent common sense in the idea but the obvious impossibility of its application being agreed to in almost any given case has led to the very practice mentioned, that of fixing a time limit to the bargain; which leaves *rebus sic stantibus* generally in the realm of theory and of legal discussion rather than in the field of diplomatic notes or international arbitration.

Those whose memories go back as far as 1919 and 1920 will recall the heated discussions in the United States on the "withdrawal" clause in the Covenant of the League of Nations. It was asserted (erroneously) that the clause would require a Member of the League (the United States, under the hypothesis of the ratification of the treaty of Versailles) to remain a member unless other Powers (the Council) consented to withdrawal. One of the Lodge reservations to the Covenant sought to protect the supposed but imaginary limitation of American sovereignty.

Here, however, is a Treaty where the question of withdrawal is not even arguable. There is *no* withdrawal. We are bound forever and ever.

True, *all* the other Signatories might release us, but it requires imagination to suppose such a request being made by the United States, the proponent of the Treaty, and something more than imagination to suppose its being granted; incidentally, to go back to 1920, it may be noticed that not one but all of what were then called the British six (now seven) "votes" would be necessary, with the rest. Here, I repeat, we are bound by our solemn pledge, made at our own suggestion, "as long as grass grows and water runs."

What is true of the United States in this regard is naturally equally true of every other Party to the Treaty. The promise of each made to all the others runs in perpetuity, unless there is unanimous consent to termination or limitation or revision.

Nor would the doctrine of *rebus sic stantibus* to which I have alluded, help us or any other Power that wanted to withdraw. The whole idea of the Treaty is that it is operative under any sort of *res* or conditions that may arise.

It is most emphatically a Treaty drawn on the basis that conditions may change, but *not* the Treaty, which is to fit them all, now and hereafter.

For us in the United States it is vital to observe that this Treaty is thus a qualification of our Constitution. I do not use the word "amendment" for it would not be technically correct; but the Treaty makes as real a change in the Constitution of the United States as would an amendment proposed by two-thirds of each House and ratified by three-fourths of the States. I assume here that we will live up to the Treaty; of course we might break it as any other Party might; but with good faith it is inviolable on our part and with good faith the war-making power of Congress under the Constitution is radically altered and limited. The Congress, says the Constitution, has power to declare war; and this means if and when the Congress chooses, and for a good reason or a bad reason or no reason at all; but with the Treaty, Congress may *not* declare war unless and until we have sought and failed to settle our dispute with the other country "by pacific means"; Congress may *not declare war at all as an instrument of national policy*; it may declare war only in other cases, self-defense and the like, meaning here only an occasion when the Treaty is violated by another Power.

The change is great; the difference is profound; we may sense it if we consider some of our past history; with such a Treaty, the war of 1812 with the British would not have taken place; with such a Treaty, we could not start another such war as that with Mexico; with such a Treaty, the Spanish War is not imaginable.

The Treaty is on our own suggestion our pledge to the civilised world; and it is also the supreme Law of the Land; all other Powers by their acceptance of the Treaty limit their freedom of action under the hitherto accepted rules of international law; but, like other Powers with written Constitutions, we also limit our freedom of action under our fundamental law; in a very real sense (not the strict legal

sense) we forever curtail one of the constitutional powers of the Congress of the United States.

Is all this for good or for evil? Perhaps only time can tell; but I think it is all for good.

DOCUMENTS

Where the English of a Document is a translation, it is, except as otherwise noted, that of the Department of State.

Document 1

The Briand Message, April 6, 1927

Statement made to the Associated Press by M. Briand, Minister of Foreign Affairs of France.

A l'heure où la pensée du monde occidental se reporte à cette date solennelle de l'entrée en guerre des Etats-Unis, j'adresse au peuple américain l'expression émue des sentiments très fraternels et très confiants que nourrira toujours pour lui le peuple français.

Je n'oublie pas que c'est à moi que fut réservé d'apprendre, le premier, par une communication officielle de M. Sharp, alors ambassadeur des Etats-Unis à Paris, que le gouvernement fédéral avait pris la détermination qui devait exercer une influence si considérable dans l'histoire de la guerre mondiale.

Dix années se sont écoulées depuis que la nation américaine, dans un élan magnifique, s'associat aux nations alliées pour la défense des libertés menacées, et au cours de ces années, un même esprit de justice et d'humanité n'a cessé d'animer nos deux pays, également soucieux de mettre fin à la guerre et d'en empêcher le retour.

La France veut autour d'elle une atmosphère de confiance et de paix et ses efforts se sont traduits par la signature d'accords tendant à écarter la menace des conflits. La limitation des armements, recherchée aussi sincèrement par nos deux gouvernements, répond aux vœux ardents du peuple français tout entier, sur qui pèsent depuis plus d'un demi siècle de lourdes charges militaires et qui a supporté pendant quatre ans sur son territoire des dévastations non encore réparées.

Les discussions sur le désarmement ont pu faire apparaître toute la complexité du problème technique soumis à l'examen d'experts, elles ont permis du moins de dégager, politiquement, la communauté d'inspiration et l'identité de buts qui existent entre la France et les Etats-Unis. Deux grandes nations démocratiques, éprises du même idéal de paix, cheminent d'un même pas vers la même conclusion: les divergences de vues qui peuvent se manifester entre elles ne portent jamais que sur des questions de procédure ou de méthode. Et là même où les propositions de la France ne peuvent rencontrer celles des

Document 1

The Briand Message, April 6, 1927

Statement made to the Associated Press by M. Briand, Minister of Foreign Affairs of France.

[Translation; from *International Conciliation*, No. 243]

At this hour when the thought of the Western World reverts to that solemn date of the entrance of the United States into the war, I address to the American people the warm expression of cordial fraternity and complete confidence which the French people will always cherish for them.

I cannot forget that I was the first to learn, through an official communication from Mr. Sharp, then Ambassador of the United States at Paris, that the Federal Government had reached the decision which was to exert so considerable an influence on the history of the World War.

Ten years have passed since the American nation, with magnificent enthusiasm, associated itself with the Allied Nations for the defense of imperiled liberty and in the course of those years the same spirit of justice and humanity has continued to inspire our two countries, both determined to put an end to the war and to prevent its return.

France wishes to live in an atmosphere of confidence and peace and the evidence of this is her signature to agreements tending to hold at bay the threat of conflict. Limitation of armaments, sincerely sought by both of our governments, meets the ardent desires of the entire French people on whom heavy military charges have weighed for more than half a century and who for four years suffered devastation, not yet repaired.

Discussions on disarmament have brought out all the complexity of the technical problem submitted to experts for study; they have at least served to make clear politically the common inspiration and the identity of aims which exist between France and the United States. Two great democratic nations, enthused with the same ideal of peace, follow the same path toward the same end: the differences of opinion manifested between them are limited to questions of procedure or method. Even where the proposals of France do not coincide with those of the United States they at least make clear to the American

Etats-Unis, elles établissent du moins clairement aux yeux du peuple américain combien la France, sous la seule réserve de sa sécurité, est prête à s'engager loin dans la voie des réalisations.

Faut-il rappeler les propositions françaises, à Genève, tendant à limiter la plus redoutable des menaces de guerre de demain par la contrôle de l'armement industriel et chimique des Etats? La France a été plus loin encore lorsqu'elle a proposé l'institution internationale d'un "état-major général de la paix." Enfin, dans l'organisation de ses forces nationales, elle donne, en ce moment même, la preuve de son inspiration éminemment pacifique en envisageant la reconstitution de son armement d'un point de vue purement défensif. La nouvelle loi militaire actuellement soumise au Parlement français a bien été conçue par les hommes les plus hostiles au danger du militarisme: elle tend, pour la première fois, à "supprimer la conception de la guerre profitable" et fit supporter à tous, hommes ou femmes, le poids abominable de la guerre, la nation tout entière étant ainsi mise en garde contre un péril commun. Une telle organisation n'est-elle pas exclusive de toute tendance agressive?

Plus que telle ou telle question de procédure dans l'élaboration technique d'un projet de désarmement, c'est cette question fondamentale d'une politique de paix, c'est-à-dire d'une volonté de paix et d'un esprit de paix, qui importe vraiment. Car le désarmement, après tout, ne peut résulter que de la volonté de paix des nations du monde civilisé. Et c'est par là que la pensée américaine est assurée toujours de rencontrer la pensée française.

Pour qui s'attache à cette réalité vivante d'une politique de paix, les Etats-Unis et la France apparaissent déjà dans le monde comme moralement solidaires. S'il en était besoin, entre ces deux grandes démocraties, pour témoigner encore plus hautement en faveur de la paix et proposer aux peuples un exemple plus solennel, la France serait prête à souscrire publiquement, avec les Etats-Unis, tout engagement mutuel tendant à mettre entre ces deux pays suivant l'expression américaine, "la guerre hors la loi." La renonciation à la guerre comme instrument de politique nationale est une conception déjà familière aux signataires du pacte de la Société des nations et des traités de Locarno. Tout engagement souscrit dans la même esprit, par les Etats-Unis, envers une autre nation comme la France, contribuerait grandement, aux yeux du

people that France, with the sole reservation of security, is ready to go far in practical accomplishment.

Is it necessary to recall the French proposals at Geneva tending to limit the most formidable menace of future war by the control of industrial and chemical national armaments? France went still farther when she proposed the international establishment of a "General Staff for Peace." Finally in the organization of her national forces she gives at this very moment the evidence of her essentially peaceful motives by planning the reconstitution of her armaments on a purely defensive basis. The new military law now submitted to the French Parliament has been conceived by men most hostile to the spirit of militarism. For the first time it tends "to suppress the conception of profitable war" and to make every man and woman share the abominable weight of war, the whole nation thus being put on guard against a common peril. Does not such an organization exclude all aggressive tendency?

More important than any question of procedure in the technical elaboration of a plan for disarmament is the question of the policy of peace, that is to say the will to peace and the habit of thinking in terms of peace. For after all disarmament can only result from the will to peace of the nations of the civilized world and it is on this point that American thought is always sure to be in agreement with French thought.

For those whose lives are devoted to securing this living reality of a policy of peace the United States and France already appear before the world as morally in full agreement. If there were need for those two great democracies to give high testimony to their desire for peace and to furnish to other peoples an example more solemn still, France would be willing to subscribe publicly with the United States to any mutual engagement tending "to outlaw war," to use an American expression, as between these two countries. The renunciation of war as an instrument of national policy is a conception already familiar to the signatories to the Covenant of the League of Nations and of the Treaties of Locarno. Every engagement entered into in this spirit by the United States toward another nation such as France would contribute greatly in the eyes of

monde, à élargir et fortifier la base sur laquelle s'édifie une politique internationale de la paix. Ainsi deux grandes nations amies également dévouées à la cause de la paix, auraient fourni au monde la meilleure illustration de cette vérité que la réalisation la plus immédiate à atteindre n'est pas tant le désarmement que la pratique de la paix.

En souvenir de ce dixième anniversaire de l'entrée en guerre des Etats-Unis, la Légion américaine se prépare à faire un pieux pèlerinage en France, où reposent ses morts et où se tiendra sa convention annuelle. Je souhaite que les légionnaires viennent ici le plus nombreux possible : ils y seront les bienvenus. De leur trop court séjour parmi nous ils emporteront, je le sais, le souvenir d'une France au travail, aussi désireuse de la paix qu'elle a été ardente à la guerre, et largement ouverte à tout cela de grand et de généreux qui fait battre les coeurs à l'unisson des vôtres.

the world to broaden and strengthen the foundations on which the international policy of peace is being erected. These two great friendly nations, equally devoted to the cause of peace, would furnish to the world the best illustration of the truth that the immediate end to be attained is not so much disarmament as the practical application of peace itself.

In memory of this Tenth Anniversary of the entrance of the United States into the War, the American Legion is preparing to make a pious pilgrimage to France where rest its dead and where it will hold its annual convention. I hope that the greatest possible number of the American Legion will come here. They will be welcome. From their brief stay with us will result, I am sure, the memory of a France at work, as desirous of peace as she has been ardent for war and wide open to all that is great and generous which makes her heart beat in unison with yours.

Document 2

Draft Pact of Perpetual Friendship, June 20, 1927

Transmitted to the Secretary of State by M. Briand

20 juin 1927.

PROJECT DE PACTE D'AMITE PERPETUELLE ENTRE LA FRANCE ET LES ETATS-UNIS

Le Président de la République française et le Président des Etats-Unis d'Amérique,

Egalement désireux d'affirmer la solidarité du peuple français et du peuple des Etats-Unis d'Amérique dans leur volonté de paix et dans leur renonciation à recourir aux armes comme instrument de leur politique réciproque,

Et étant tombés d'accord pour consacrer dans un Acte solennel ces sentiments aussi conformes aux progrès des démocraties modernes qu'à l'amitié et à l'estime réciproques de deux nations qu'aucune guerre n'a jamais divisées et que la défense de la liberté et de la justice a toujours rapprochées,

Ont à cette fin désigné pour leurs plénipotentiaires, savoir,

Le Président de la République française

.....

Le Président des Etats-Unis d'Amérique

.....

Lesquels, après avoir échangé leurs pouvoirs reconnus en bonne et dûe forme, sont convenus des dispositions suivantes.

ARTICLE 1er

Les Hautes Parties Contractantes déclarent solennellement, au nom du Peuple français et du Peuple des Etats-Unis d'Amérique, condamner le recours à la guerre et y renoncer respectivement comme instrument de leur politique nationale réciproque.

ARTICLE 2

Le règlement ou la solution de toutes contestations ou conflits de quelque nature ou de quelque origine que ce soit, qui

Document 2

Draft Pact of Perpetual Friendship, June 20, 1927

Transmitted to the Secretary of State by M. Briand

[Translation]

June 20, 1927.

DRAFT OF AN ACT OF PERPETUAL FRIENDSHIP BETWEEN FRANCE AND THE UNITED STATES

The President of the French Republic and the President of the United States of America, .

Equally desirous of affirming the solidarity of the French people and the people of the United States of America in their wish for peace and in their renunciation of a recourse to arms as an instrument of their policy towards each other,

And having come to an agreement to consecrate in a solemn act these sentiments as much in accord with the progress of modern democracies as with the mutual friendship and esteem of two nations that no war has ever divided and which the defense of liberty and justice has always drawn closer,

Have to this end designated for their plenipotentiaries, to wit:

The President of the French Republic:.....

The President of the United States of America:.....

Who, after having exchanged their powers, recognized in good and due form, have agreed upon the following provisions:

ARTICLE I

The high contracting powers solemnly declare, in the name of the French people and the people of the United States of America, that they condemn recourse to war and renounce it respectively as an instrument of their national policy towards each other.

ARTICLE 2

The settlement or the solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which

viendraient à s'élever entre la France et les Etats-Unis d'Amérique, ne seront jamais recherchés de part et d'autre que par des procédés pacifiques.

ARTICLE 3

Le présent Acte sera ratifié. Les ratifications en seront échangées à aussitôt que faire se pourra et dès ce moment il aura pleine force et valeur.

En foi de quoi les plénipotentiaires susnommés ont signé le présent Acte et l'ont revêtu de leur sceau.

Dressé à en deux exemplaires (l'un et l'autre rédigés en français et en anglais et faisant également foi), le mil neuf cent vingtsept.

(Signatures et cachets)

may arise between France and the United States of America, shall never be sought by either side except by pacific means.

ARTICLE 3

The present act shall be ratified. The ratifications thereof shall be exchanged at as soon as possible and from that time it shall have full force and value.

In witness whereof the above-named plenipotentiaries have signed the present act and have thereunto set their seal.

Done at in two copies (each drawn up both in French and English and having equal force), the nineteen hundred and twenty-seven.

(Signatures and seals)

Document 3

American Note, December 28, 1927

The Secretary of State to the French Ambassador (Caudel)

WASHINGTON, *December 28, 1927.*

EXCELLENCY: I have the honor to refer to the form of treaty entitled "Draft of pact of perpetual friendship between France and the United States," which his excellency the Minister of Foreign Affairs was good enough to transmit to me informally last June through the instrumentality of the American Ambassador at Paris.

This draft treaty proposes that the two powers should solemnly declare in the name of their respective peoples that they condemn recourse to war, renounce it as an instrument of their national policy towards each other, and agree that a settlement of disputes arising between them, of whatsoever nature or origin they may be, shall never be sought by either party except through pacific means. I have given the most careful consideration to this proposal and take this occasion warmly to reciprocate on behalf of the American people the lofty sentiments of friendship which inspired the French people, through his excellency M. Briand, to suggest the proposed treaty.

The Government of the United States welcomes every opportunity for joining with the other governments of the world in condemning war and pledging anew its faith in arbitration. It is firmly of the opinion that every international endorsement of arbitration, and every treaty repudiating the idea of a resort to arms for the settlement of justiciable disputes, materially advances the cause of world peace. My views on this subject find a concrete expression in the form of the arbitration treaty which I have proposed in my note to you of December 28, 1927, to take the place of the arbitration convention of 1908. The proposed treaty extends the scope of that convention and records the unmistakable determination of the two Governments to prevent any breach in the friendly relations which have subsisted between them for so long a period.

In view of the traditional friendship between France and the United States—a friendship which happily is not dependent upon the existence of any formal engagement—and in view of the common desire of the two nations never to resort to arms

in the settlement of such controversies as may possibly arise between them, which is recorded in the draft arbitration treaty just referred to, it has occurred to me that the two Governments, instead of contenting themselves with a bilateral declaration of the nature suggested by M. Briand, might make a more signal contribution to world peace by joining in an effort to obtain the adherence of all of the principal powers of the world to a declaration renouncing war as an instrument of national policy. Such a declaration, if executed by the principal world powers, could not but be an impressive example to all the other nations of the world, and might conceivably lead such nations to subscribe in their turn to the same instrument, thus perfecting among all the powers of the world an arrangement heretofore suggested only as between France and the United States.

The Government of the United States is prepared, therefore, to concert with the Government of France with a view to the conclusion of a treaty among the principal powers of the world, open to signature by all nations, condemning war and renouncing it as an instrument of national policy in favor of the pacific settlement of international disputes. If the Government of France is willing to join with the Government of the United States in this endeavor, and to enter with the United States and the other principal powers of the world into an appropriate multilateral treaty, I shall be happy to engage at once in conversations looking to the preparation of a draft treaty following the lines suggested by M. Briand for submission by France and the United States jointly to the other nations of the world.

Accept [etc.]

FRANK B. KELLOGG

Document 4

French Note, January 5, 1928

The French Ambassador (Clandel) to the Secretary of State

[Translation]

WASHINGTON, January 5, 1928.

MR. SECRETARY OF STATE. By a letter of December 28 last, your excellency was kind enough to make known the sentiments of the Government of the United States concerning the suggestion of a treaty proposed by the Government of the Republic in the month of June 1927, with a view to the condemnation of war and the renunciation thereof as an instrument of national policy between France and the United States.

According to your excellency, the two governments, instead of limiting themselves to a bilateral treaty, would contribute more fully to the peace of the world by uniting their efforts to obtain the adhesion of all the principal powers of the world to a declaration renouncing war as an instrument of their national policy.

Such a declaration, if it were subscribed to by the principal powers, could not fail to be an impressive example to all the nations of the world and might very well lead them to subscribe in their turn to the same pact, thus bringing into effect as among all the nations of the world an arrangement which at first was only suggested as between France and the United States.

The Government of the United States, therefore, would be disposed to join the Government of the Republic with a view to concluding a treaty between the principal powers of the world which, open to the signature of all nations, would condemn war, would contain a declaration to renounce it as an instrument of national policy and would substitute therefor the pacific settlement of disputes between nations.

Your excellency added that if the Government of the Republic agrees thus to join the Government of the United States and the other principal powers of the world in an appropriate multilateral treaty, your excellency would be happy to undertake immediately conversations leading to the elaboration of a draft inspired by the suggestions of M. Briand and destined to be proposed jointly by France and the United States to the other nations of the world.

The Government of the Republic appreciated sincerely the favorable reception given by the Government of the United States to the proposal of M. Briand. It believes that the procedure suggested by your excellency and carried out in a manner agreeable to public opinion and to the popular sentiment of the different nations would appear to be of such nature as to satisfy the views of the French Government. It would be advantageous immediately to sanction the general character of this procedure by affixing the signatures of France and the United States.

I am authorized to inform you that the Government of the Republic is disposed to join with the Government of the United States in proposing for agreement by all nations a treaty to be signed at the present time by France and the United States and under the terms of which the high contracting parties shall renounce all war of aggression and shall declare that for the settlement of differences of whatever nature which may arise between them they will employ all pacific means. The high contracting parties will engage to bring this treaty to the attention of all states and invite them to adhere.

The Government of the Republic is convinced that the principles thus proclaimed cannot but be received with gratitude by the entire world, and it does not doubt that the efforts of the two governments to insure universal adoption will be crowned with full success.

Accept [etc.]

CLAUDEL

Document 5

American Note, January 11, 1928

The Secretary of State to the French Ambassador (Claudel)

WASHINGTON, January 11, 1928.

EXCELLENCY: In the reply which your Government was good enough to make to my note of December 28, 1927, his excellency the Minister of Foreign Affairs summarized briefly the proposal presented by the Government of the United States, and stated that it appeared to be of such a nature as to satisfy the views of the French Government. In these circumstances he added that the Government of the Republic was disposed to join with the Government of the United States in proposing for acceptance by all nations a treaty to be signed at the present time by France and the United States, under the terms of which the high contracting parties should renounce all wars of aggression and should declare that they would employ all peaceful means for the settlement of any differences that might arise between them.

The Government of the United States is deeply gratified that the Government of France has seen its way clear to accept in principle its proposal that, instead of the bilateral pact originally suggested by M. Briand, there be negotiated among the principal powers of the world an equivalent multilateral treaty open to signature by all nations. There can be no doubt that such a multilateral treaty would be a far more effective instrument for the promotion of pacific relations than a mere agreement between France and the United States alone, and if the present efforts of the two Governments achieve ultimate success, they will have made a memorable contribution to the cause of world peace.

While the Government of France and the Government of the United States are now closely in accord so far as the multilateral feature of the proposed treaty is concerned, the language of M. Briand's note of January 5, 1928, is in two respects open to an interpretation not in harmony with the idea which the Government of the United States had in mind when it submitted to you the proposition outlined in my note of December 28, 1927. In the first place, it appears to be the thought of your Government that the proposed multilateral treaty be

signed in the first instance by France and the United States alone and then submitted to the other powers for their acceptance. In the opinion of the Government of the United States this procedure is open to the objection that a treaty, even though acceptable to France and the United States, might for some reason be unacceptable to one of the other great powers. In such event the treaty could not come into force and the present efforts of France and the United States would be rendered abortive. This unhappy result would not necessarily follow a disagreement as to terminology arising prior to the definitive approval by any Government of a proposed form of treaty, since it is by no means unreasonable to suppose that the views of the governments concerned could be accommodated through informal preliminary discussions and a text devised which would be acceptable to them all. Both France and the United States are too deeply interested in the success of their endeavors for the advancement of peace to be willing to jeopardize the ultimate accomplishment of their purpose by incurring unnecessary risk of disagreement with the other powers concerned, and I have no doubt that your Government will be entirely agreeable to joining with the Government of the United States and the governments of the other powers concerned for the purpose of reaching a preliminary agreement as to the language to be used in the proposed treaty, thus obviating all danger of confronting the other powers with a definitive treaty unacceptable to them. As indicated below, the Government of the United States would be pleased if the Government of France would agree that the draft treaty submitted by M. Briand last June should be made the basis of such preliminary discussions.

In the second place, and this point is closely related to what goes before, M. Briand's reply of January 5, 1928, in expressing the willingness of the Government of France to join with the Government of the United States in proposing a multilateral treaty for the renunciation of war, apparently contemplates that the scope of such treaty should be limited to wars of aggression. The form of treaty which your Government submitted to me last June which was the subject of my note of December 28, 1927, contained no such qualification or limitation. On the contrary it provided unequivocally for the renunciation by the high contracting parties of all war as an instrument of national policy in the following terms:

ARTICLE I

The high contracting powers solemnly declare, in the name of the French people and the people of the United States of America, that they condemn recourse to war and renounce it respectively as an instrument of their national policy towards each other.

ARTICLE 2

The settlement or the solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise between France and the United States of America, shall never be sought by either side except by pacific means.

I am not informed of the reasons which have led your Government to suggest this modification of its original proposal, but I earnestly hope that it is of no particular significance and that it is not to be taken as an indication that the Government of France will find itself unable to join with the Government of the United States in proposing, as suggested above, that the original formula submitted by M. Briand which envisaged the unqualified renunciation of all war as an instrument of national policy be made the subject of preliminary discussions with the other great powers for the purpose of reaching a tentative agreement as to the language to be used in the proposed treaty.

If your Government is agreeable to the plan outlined above and is willing that further discussions of the terms of the proposed multilateral treaty be based upon the original proposal submitted to me by M. Briand last June, I have the honor to suggest that the Government of France join with the Government of the United States in a communication to the British, German, Italian and Japanese Governments transmitting the text of M. Briand's original proposal and copies of the subsequent correspondence between the Governments of France and the United States for their consideration and comment, it being understood, of course, that these preliminary discussions would in no way commit any of the participating Governments pending the conclusion of a definitive treaty.

Accept [etc.]

FRANK B. KELLOGG

Document 6

French Note, January 21, 1928

The French Ambassador (Claudel) to the Secretary of State

[Translation]

WASHINGTON, January 21, 1928.

MR. SECRETARY OF STATE: Your excellency was pleased to inform me in your note of the 11th instant, of the considerations suggested to you by my letter of January 5 in answer to your communication of December 28, 1927. My Government has asked me to express to you its satisfaction at the harmonizing, thanks to your excellency, of the views of the two Governments concerning the best method of accomplishing a project upon the essential principles of which they apparently are in agreement.

The original French proposal of June 1927, contemplating an act confined to France and the United States, appeared to the French Government to be both desirable and feasible by reason of the historical relations between the two Republics.

The American Government was only willing, however, to embody the declaration proposed by the French Government in the preamble of the Franco-American arbitration convention now in process of renewal, and considered on the other hand, for reasons of its own which the French Government has not failed to take into account, that it would be opportune to broaden this manifestation against war and to make it the subject of a separate act in which the other powers would be invited to participate.

The Government of the Republic was not opposed to this expansion of its original plan, but it could not but realize, and it felt bound to point out that the new negotiation as proposed would be more complex and likely to meet with various difficulties.

The question as to whether there would be any advantage in having such an instrument, of a multipartite nature, signed in the first place by France and the United States, or else first elaborated by certain of the principal powers of the world and then presented to all for their signature, is essentially one of procedure.

The Government of the Republic offered a suggestion upon this point only because of its desire more speedily and more

surely to achieve the result which it seeks in common with the United States. This is tantamount to saying that it is ready to concur in any method which may appear to be the most practicable.

There is, however, a situation of fact to which my Government has requested me to draw your particular attention.

The American Government cannot be unaware of the fact that the great majority of the powers of the world, and among them most of the principal powers, are making the organization and strengthening of peace the object of common efforts carried on within the framework of the League of Nations. They are already bound to one another by a Covenant placing them under reciprocal obligations, as well as by agreements such as those signed at Locarno in October 1925, or by international conventions relative to guaranties of neutrality, all of which engagements impose upon them duties which they cannot contravene.

In particular, your excellency knows that all states members of the League of Nations represented at Geneva in the month of September last, adopted, in a joint resolution tending to the condemnation of war, certain principles based on the respect for the reciprocal rights and duties of each. In that resolution the powers were led to specify that the action to be condemned as an international crime is aggressive war and that all peaceful means must be employed for the settlement of differences, of any nature whatsoever, which might arise between the several states.

This is a condition of affairs which the United States, while a stranger thereto, cannot decline to take into consideration, just as must any other state called upon to take part in the negotiation.

Furthermore, the United States would not in any way be bound thereby to the provisions of the Covenant of the League of Nations. The French proposal of June last looking to the conclusion of a bilateral compact, had been drawn up in the light of the century-old relations between France and the United States; the French Government still stands ready to negotiate with the American Government on the same conditions and on the same basis. It has never altered its attitude in that respect. But when confronted by the initiative of the United States in proposing a multipartite covenant, it had to take into consideration the relations existing among the various powers which

would be called upon to participate therein. This it has done, with the object of assuring the success of the treaty contemplated by the United States. Its suggestions of January 5 as to the terms of the multipartite treaty are inspired by the formula which has already gained the unanimous adherence of all of the states members of the League of Nations, and which for that very reason might be accepted by them with regard to the United States, just as it has already been accepted among themselves.

This is the explanation of our proposal of January 5.

The Government of the Republic has always, under all circumstances, very clearly and without mental reservation declared its readiness to join in any declaration tending to denounce war as a crime and to set up international sanctions susceptible of preventing or repressing it. There has been no change in its sentiments in that respect: its position remains the same. Your excellency may therefore be assured of its sincere desire to respond to the idea of the American Government and to second its efforts to the full extent compatible with the situation of fact created by its international obligations. It is this preoccupation which inspired the formula proposed on January 5, a formula which does indeed seem to be the most apt at this time to assure the accomplishment of the American project. The Government of the Republic accordingly can not but hope that the American Government will share this view. Subject to these observations, the Government of the Republic would, moreover, very gladly welcome any suggestions offered by the American Government which would make it possible to reconcile an absolute condemnation of war with the engagements and obligations assumed by the several nations and the legitimate concern for their respective security.

Pray accept [etc.]

CLAUDEL

Document 7

American Note, February 27, 1928

The Secretary of State to the French Ambassador (Claudel)

WASHINGTON, February 27, 1928.

EXCELLENCY: Our recent discussions of the question whether the United States and France could join in suggesting to the other principal powers of the world the conclusion of a treaty proscribing war as an instrument of national policy in their mutual relations have been brought by your note of January 21, 1928, to a point where it seems necessary, if success is to be achieved, to examine the problem from a practical point of view.

It is evident from our previous correspondence that the Governments of France and the United States are of one mind in their earnest desire to initiate and promote a new international movement for effective world peace, and that they are in agreement as to the essential principles of the procedure to be followed in the accomplishment of their common purpose. As I understand your note of January 21, 1928, the only substantial obstacle in the way of the unqualified acceptance by France of the proposals which I submitted in my notes of December 28, 1927, and January 11, 1928, is your Government's doubt whether as a member of the League of Nations and a party to the treaties of Locarno and other treaties guaranteeing neutrality, France can agree with the United States and the other principal world powers not to resort to war in their mutual relations, without *ipso facto* violating her present international obligations under those treaties. In your excellency's last note this question was suggested for consideration.

Without, of course, undertaking formally to construe the present treaty obligations of France, I desire to point out that if those obligations can be interpreted so as to permit France to conclude a treaty with the United States such as that offered to me last June by M. Briand and offered again in your note of January 21, 1928, it is not unreasonable to suppose that they can be interpreted with equal justice so as to permit France to join with the United States in offering to conclude an equivalent multilateral treaty with the other principal powers of the world. The difference between the bilateral and

multilateral form of treaty having for its object the unqualified renunciation of war as an instrument of national policy, seems to me to be one of degree and not of substance. A Government free to conclude such a bilateral treaty should be no less able to become a party to an identical multilateral treaty since it is hardly to be presumed that members of the League of Nations are in a position to do separately something they cannot do together. I earnestly hope, therefore, that your Government, which admittedly perceives no bar to the conclusion of an unqualified antiwar treaty with the United States alone, will be able to satisfy itself that an equivalent treaty among the principal world powers would be equally consistent with membership in the League of Nations. If, however, members of the League of Nations cannot, without violating the terms of the Covenant of the League, agree among themselves and with the Government of the United States to renounce war as an instrument of their national policy, it seems idle to discuss either bilateral or multilateral treaties unreservedly renouncing war. I am reluctant to believe, however, that the provisions of the Covenant of the League of Nations really stand in the way of the cooperation of the United States and members of the League of Nations in a common effort to abolish the institution of war. Of no little interest in this connection is the recent adoption of a resolution by the Sixth International Conference of American States expressing in the name of the American Republics unqualified condemnation of war as an instrument of national policy in their mutual relations. It is significant to note that of the twenty-one states represented at the Conference, seventeen are members of the League of Nations.

I trust, therefore, that neither France nor any other member of the League of Nations will finally decide that an unequivocal and unqualified renunciation of war as an instrument of national policy either violates the specific obligations imposed by the Covenant or conflicts with the fundamental idea and purpose of the League of Nations. On the contrary, is it not entirely reasonable to conclude that a formal engagement of this character entered into by all of the principal powers, and ultimately, I trust, by the entire family of nations, would be a most effective instrument for promoting the great ideal of peace which the League itself has so closely at heart? If, however, such a declaration were accompanied by definitions of

the word "aggressor" and by exceptions and qualifications stipulating when nations would be justified in going to war, its effect would be very greatly weakened and its positive value as a guaranty of peace virtually destroyed. The ideal which inspires the effort so sincerely and so hopefully put forward by your Government and mine is arresting and appealing just because of its purity and simplicity; and I cannot avoid the feeling that if governments should publicly acknowledge that they can only deal with this ideal in a technical spirit and must insist upon the adoption of reservations impairing, if not utterly destroying the true significance of their common endeavors, they would be in effect only recording their impotence, to the keen disappointment of mankind in general.

From the broad standpoint of humanity and civilization, all war is an assault upon the stability of human society, and should be suppressed in the common interest. The Government of the United States desires to see the institution of war abolished, and stands ready to conclude with the French, British, Italian, German and Japanese Governments a single multilateral treaty open to subsequent adherence by any and all other governments, binding the parties thereto not to resort to war with one another. The precise language to be employed in such a treaty is a matter of indifference to the United States so long as it clearly and unmistakably sets forth the determination of the parties to abolish war among themselves. I therefore renew the suggestion contained in my note of January 11, 1928, that the Government of France join with the Government of the United States in transmitting to the British, Italian, German and Japanese Governments for their consideration and comment the text of M. Briand's original proposal, together with copies of the subsequent correspondence between France and the United States as a basis for preliminary discussions looking to the conclusion of an appropriate multilateral treaty proscribing recourse to war.

Accept [etc.]

FRANK B. KELLOGG

Document 8

French Note, March 30, 1928

The French Ambassador (Claudé) to the Secretary of State

[Translation]

WASHINGTON, March 30, 1928.

MR. SECRETARY OF STATE: In reply to your note of February 27 last regarding the proposal for a multilateral treaty proscribing war, I have the honor to inform your excellency that M. Briand has been pleased to find in the observations which you have submitted for his consideration a new and cordial affirmation of the common inspiration which animates our two Governments equally anxious to cooperate in an international movement toward the effective establishment of peace in the world. Assured of such a solidarity in the pursuit of an identical purpose, M. Briand remains convinced, as does your excellency, that a mutually acceptable formula may well result from the exchange of views which has taken place up to now between our two Governments, if on both sides there is a disposition to adhere to those essential realities which must be preserved in this discussion, by subordinating thereto those differences of form to which questions of terminology not affecting the substance of the discussion may upon analysis be reduced.

That is to say, that the French Government at this point of the discussion, when all the aspects of the problem have been examined, proposes to adopt as practical a point of view as possible and to facilitate as far as it can the effort of the American Government in the direction of an immediate decision.

The observations which M. Briand has ventured to offer in support of his last suggestion were inspired by a very sincere desire to facilitate in a practical manner the realization of the proposal for the contemplated multilateral treaty by pointing out the conditions best adapted to bring about the consent thereto of all the Governments whose agreement is necessary. The French wording, therefore, tending to limit to war of aggression the proscription proposed in the form of a multilateral rather than a bilateral treaty, was intended to obviate in so far as the American plan was concerned those serious diffi-

culties which would assuredly be encountered in practice. In order to pay due regard to the international obligations of the signatories, it was not possible, as soon as it became a question of a multilateral treaty, to impart thereto the unconditional character desired by your excellency without facing the necessity of obtaining the unanimous adherence of all the existing states, or at least of all the interested states, that is to say, those which by reason of their situation are exposed to the possibility of a conflict with any one of the contracting states. In the relations between the states of the American Continent there are similar difficulties which led the American Government at the Pan-American Conference at Havana to approve a resolution limited to the very terms "war of aggression" which the French Government felt compelled to use in characterizing the renunciation to which it was requested to bind itself by means of a multilateral treaty. To be sure, the same reservation does not appear in another resolution to which your excellency referred in your note of February 27, but it must be observed that this resolution in itself constituted only a kind of preliminary tending toward a treaty of arbitration with regard to which numerous reservations were formulated.

Your excellency appears to have been surprised that France should not be able to conclude with all the powers in the form of a multilateral treaty the same treaty which she offered to conclude separately with the United States in the form of a bilateral treaty. My Government believes that it has explained this point with sufficient clearness in recalling the fact that the project of a treaty of perpetual friendship between France and the United States proposed last June was drafted in such a way as to limit strictly the mutual undertakings which it contained to those relations in law resulting from intercourse between the two signatory states alone. Within such limits an absolutely unconditional agreement might be entered into, since that agreement would not expose the signatories, as would a multilateral treaty, to juridical difficulties resulting from the respective positions of various powers with regard to one another, and since furthermore, as regards two countries like France and the United States morally united as they are by ties of time-honored friendship, other contractual engagements concluded by one or the other power could never constitute in fact anything but purely theoretical obstacles.

In order to attain the result which your excellency has in

view, you have considered it preferable to adhere to the conception of a multilateral treaty, and you have deemed it necessary to insist that even in the multilateral form the proposed treaty should include an unconditional pledge. If your excellency really believes that greater chances of success may be found in this formula in spite of the consequences which it involves, especially the necessity of attaining a treaty world-wide in its scope, the French Government would hesitate to discuss longer the question of its adherence to a plan which the American Government originated and for which it is responsible. Without in any way losing sight of its international obligations, both as a member of the League of Nations and as a party to the treaties of Locarno or treaties guaranteeing neutrality, France, for the purpose of finding a common basis for initial negotiations, is wholly disposed, after a new examination of the proposals formulated by your excellency, to suggest immediately to the German, British, Italian and Japanese Governments that they join in seeking, in the spirit and in the letter of the last American note, any adjustments which in the last analysis may be forthcoming with respect to the possibility of reconciling previous obligations with the terms of the contemplated new treaty.

The French Government notes at once with satisfaction that while advocating the conclusion among the Governments specifically mentioned of a treaty binding the signatories not to resort to war, the Government of the United States admits the participation in that treaty of all the other governments of the world. This conception accords with a reservation actually necessary for obtaining a real instrument for the establishment of peace by means of a formal engagement among all powers among whom political controversies may arise. Such an engagement would in fact involve the risk of exposing the signatories to dangers and misunderstandings unless based upon the complete equality in the application of the treaty among themselves of all the states with respect to other states and not only upon the equality of certain states among them. The treaty contemplated could not operate in respect of one power which is a party thereto unless the other states exposed to the possibility of grave controversies with that party were also signatories thereof.

At the same time it is clear that in order not to turn an instrument of progress and peace into a means of oppression, if

one of the signatory states should fail to keep its word, the other signatories should be released from their engagement with respect to the offending state. On this second point, as on the first, the French Government believes itself fully in accord with the Government of the United States.

My Government likewise gathers from the declarations which your excellency was good enough to make to me on the first of last March, the assurance that the renunciation of war, thus proclaimed, would not deprive the signatories of the right of legitimate defense. Such an interpretation tends to dissipate apprehensions, and the French Government is happy to note it.

If such is the attitude of the American Government on these three fundamental points, and if it is clearly understood in a general way that the obligations of the new pact should not be substituted for, or prejudice in any way, previous obligations contained in international instruments such as the Covenant of the League of Nations, the Locarno agreements or treaties guaranteeing neutrality whose character and scope can not be modified thereby, then the differences of opinion which have appeared in the course of previous phases of the negotiation have to do more with words than with the reality of the problem facing the two Governments to-day.

Hence, in accordance with the proposal contained in your note of January 11, which you kindly renewed in your note of the 27th of February, the French Government would be prepared forthwith to join with the Government of the United States in submitting for the consideration of the Governments of Germany, Great Britain, Italy and Japan, the correspondence exchanged between France and the United States since June 1927, and in proposing at the same time for the assent of the four Governments, a draft agreement essentially corresponding in purpose to the original proposal of M. Briand, in the multipartite form desired by the United States with the changes of wording made necessary by the new concept; the signatory powers of such an instrument, while not prejudicing their rights of legitimate defense within the framework of existing treaties, should make a solemn declaration condemning recourse to war as an instrument of national policy, or in other words as a means of carrying out their own spontaneous, independent policy.

They would specifically undertake, among themselves, to refrain from any attack or invasion, and never to seek the settle-

ment of any difference or conflict of whatsoever nature or origin which might arise between them save by pacific means. It would, however, be clearly understood that an obligation could only exist for the signatories in the event that the engagement were contracted by all states, that is to say, that the treaty, open to the accession of all powers, would only come into force after having received universal acceptance, unless the powers having signed this treaty or acceded thereto should agree upon its coming into force, despite certain abstentions. Finally, in case one of the contracting powers should happen to contravene the treaty, the other contracting powers would be automatically relieved, with respect to that power, of the obligations contained in the treaty.

It is in this form, it would seem, that the negotiation of a plan for a multilateral pact such as conceived by the American Government could be pursued with the greatest chances of success. Your excellency may be assured, in any case, in the conduct of this negotiation of the most sincere and most complete collaboration of my Government which is always ready to associate itself without ambiguity or reservation, with any solemn and formal undertaking tending to insure, strengthen or extend the effective solidarity of the nations in the cause of peace.

In responding to these ideas, whose happy inspiration cannot be gainsaid, France would feel confident that she was continuing the work to which she has never ceased to apply herself in her foreign policy, and, faithful to her previous international engagements of that nature, that she was contributing nobly, as your excellency has said, in "promoting the great ideal of peace which the League itself has so closely at heart."

Pray accept [etc.]

CLAUDEL

Document 9

American Note, April 13, 1928

Note of the Government of the United States to the Governments of Great Britain, Germany, Italy, and Japan, delivered at the respective Foreign Offices April 13, 1928

As your excellency is aware, there has recently been exchanged between the Governments of France and the United States a series of notes dealing with the question of a possible international renunciation of war. The views of the two Governments have been clearly set forth in the correspondence between them.

The Government of the United States, as stated in its note of February 27, 1928, desires to see the institution of war abolished and stands ready to conclude with the French, British, German, Italian and Japanese Governments a single multilateral treaty open to subsequent adherence by any and all other governments binding the parties thereto not to resort to war with one another.

The Government of the French Republic, while no less eager to promote the cause of world peace and to cooperate with other nations in any practical movement towards that end, has pointed out certain considerations which in its opinion must be borne in mind by those powers which are members of the League of Nations, parties to the treaties of Locarno, or parties to other treaties guaranteeing neutrality. My Government has not conceded that such considerations necessitate any modification of its proposal for a multilateral treaty, and is of the opinion that every nation in the world can, with a proper regard for its own interests, as well as for the interests of the entire family of nations, join in such a treaty. It believes, moreover, that the execution by France, Great Britain, Germany, Italy, Japan and the United States of a treaty solemnly renouncing war in favor of the pacific settlement of international controversies would have tremendous moral effect and ultimately lead to the adherence of all the other governments of the world.

The discussions which have taken place between France and the United States have thus reached a point where it seems essential, if ultimate success is to be attained, that the British, German, Italian and Japanese Governments should each have an opportunity formally to decide to what extent, if any, its

existing commitments constitute a bar to its participation with the United States in an unqualified renunciation of war. In these circumstances the Government of the United States, having reached complete agreement with the Government of the French Republic as to this procedure, has instructed me formally to transmit herewith for the consideration of your Government the text of M. Briand's original proposal of last June, together with copies of the notes subsequently exchanged between France and the United States on the subject of a multilateral treaty for the renunciation of war.

I have also been instructed by my Government to transmit herewith for consideration a preliminary draft of a treaty¹ representing in a general way the form of treaty which the Government of the United States is prepared to sign with the French, British, German, Italian and Japanese Governments and any other Governments similarly disposed. It will be observed that the language of Articles 1 and 2 of this draft treaty is practically identical with that of the corresponding articles in the treaty which M. Briand proposed to the United States.

The Government of the United States would be pleased to be informed as promptly as may be convenient whether your excellency's Government is in a position to give favorable consideration to the conclusion of a treaty such as that transmitted herewith, and if not, what specific modifications in the text thereof would make it acceptable.

¹ Document 10.

Document 10

American Draft, April 13, 1928

Suggested draft treaty

The President of the United States of America, the President of the French Republic, His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, the President of the German Empire, His Majesty the King of Italy, His Majesty the Emperor of Japan;

Deeply sensible that their high office imposes upon them a solemn duty to promote the welfare of mankind;

Inspired by a common desire not only to perpetuate the peaceful and friendly relations now happily subsisting between their peoples but also to prevent war among any of the nations of the world;

Desirous by formal act to bear unmistakable witness that they condemn war as an instrument of national policy and renounce it in favor of the pacific settlement of international disputes;

Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavor and by adhering to the present treaty as soon as it comes into force bring their peoples within the scope of its beneficent provisions, thus uniting the civilized nations of the world in a common renunciation of war as an instrument of their national policy;

Have decided to conclude a treaty and for that purpose have appointed as their respective plenipotentiaries:

The President of the United States of America:.....

The President of the French Republic:

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India:.....

The President of the German Empire:.....

His Majesty the King of Italy:.....

His Majesty the Emperor of Japan:.....

Who, having communicated to one another their full powers found in good and due form have agreed upon the following articles:

ARTICLE I

The high contracting parties solemnly declare in the names of their respective peoples that they condemn recourse to war

for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

ARTICLE 2

The high contracting parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

ARTICLE 3

The present treaty shall be ratified by the high contracting parties named in the preamble in accordance with their respective constitutional requirements, and shall take effect as between them as soon as all their several instruments of ratification shall have been deposited at

This treaty shall, when it has come into effect as prescribed in the preceding paragraph, remain open as long as may be necessary for adherence by all the other powers of the world. Every instrument evidencing the adherence of a power shall be deposited at and the treaty shall immediately upon such deposit become effective as between the power thus adhering and the other powers parties hereto.

It shall be the duty of the Government of to furnish each Government named in the preamble and every Government subsequently adhering to this treaty with a certified copy of the treaty and of every instrument of ratification or adherence. It shall also be the duty of the Government of telegraphically to notify such Governments immediately upon the deposit with it of each instrument of ratification or adherence.

In faith whereof the respective plenipotentiaries have signed this treaty in the French and English languages, both texts having equal force, and hereunto affix their seals.

Done at the day of in the year of our Lord one thousand nine hundred and twenty

Document 11

French Draft, April 20, 1928

Draft of proposed treaty submitted by the Government of France to the Governments of Great Britain, Germany, Italy, Japan, and the United States on April 20, 1928

Projet de traité.

Le Président de l'Empire Allemand, le Président des Etats-Unis d'Amérique, le Président de la République Française, Sa Majesté le Roi d'Angleterre, d'Irlande et des Dominions britanniques, Empereur des Indes, Sa Majesté le Roi d'Italie, Sa Majesté l'Empereur du Japon,

Egalement désireux, non seulement de perpétuer les heureuses relations de paix et d'amitié qui existent actuellement entre leurs peuples, mais encore d'écarter le danger de la guerre entre toutes autres nations du monde,

Etant tombés d'accord pour consacrer dans un acte solennel leur résolution, la plus formelle et la plus claire, de condamner la guerre comme instrument de politique nationale et d'y renoncer en faveur du règlement pacifique des conflits internationaux,

Formulant enfin l'espoir que toutes les autres nations du monde voudront s'associer à cet effort humain pour réaliser l'union des peuples civilisés dans une même renonciation à la guerre comme instrument de politique nationale, ont décidé de conclure un traité et, à cette fin, ont désigné respectivement pour leurs plenipotentiaires :

le Président de l'Empire Allemand :

le Président des Etats-Unis d'Amérique :

Le Président de la République Française :

Sa Majesté le Roi de Grande-Bretagne, d'Irlande et des Dominions britanniques, Empereur des Indes :

Sa Majesté le Roi d'Italie :

Sa Majesté l'Empereur du Japon :

Lesquels, après avoir échangé leurs pleins pouvoirs reconnus en bonne et due forme, sont convenus des dispositions suivantes :

ARTICLE PREMIER :

Les Hautes Parties Contractantes, sans entendre porter atteinte à l'exercice de leurs droits de légitime défense dans le

Document 11

French Draft, April 20, 1928

Draft of proposed treaty submitted by the Government of France to the Governments of Great Britain, Germany, Italy, Japan, and the United States on April 20, 1928

[Translation]

The President of the German Empire, the President of the United States of America, the President of the French Republic, His Majesty the King of England, Ireland and the British Dominions, Emperor of India, His Majesty the King of Italy, His Majesty the Emperor of Japan:

Equally desirous not only of perpetuating the happy relations of peace and friendship now existing among their peoples, but also of avoiding the danger of war between all other nations of the world,

Having agreed to consecrate in a solemn act their most formal and most definite resolution to condemn war as an instrument of national policy and to renounce it in favor of a peaceful settlement of international conflicts,

Expressing, finally, the hope that all the other nations of the world will be willing to join in this humane effort to bring about the association of the civilized peoples in a common renunciation of war as an instrument of national policy, have decided to conclude a treaty and to that end have designated as their respective plenipotentiaries:

The President of the German Empire:

The President of the United States of America:

The President of the French Republic:

His Majesty the King of Great Britain, Ireland and the British Dominions, Emperor of India:

His Majesty the King of Italy:

His Majesty the Emperor of Japan:

Who, after exchanging their full powers found to be in good and due form, have agreed on the following provisions:

ARTICLE I

The high contracting parties without any intention to infringe upon the exercise of their rights of legitimate self-defense

cadre des traités existants, notamment lorsque ceux-ci assimilent la violation de certaines de leurs dispositions à un acte hostile, déclarent solennellement condamner le recours à la guerre et y renoncer comme instrument de politique nationale, c'est-à-dire comme instrument d'une action politique personnelle, spontanée et indépendante dont elles prendraient l'initiative et non d'une action dans laquelle elles se trouveraient entraînées par l'obligation d'un traité tel que le pacte de la Société des Nations ou tout autre traité enregistré à la Société des Nations. Elles s'engagent dans ces termes à ne se livrer l'une contre l'autre à aucune attaque ou invasion.

ARTICLE DEUX :

Le règlement ou la solution de toutes contestations ou conflits, de quelque nature ou de quelque origine que ce soit, qui viendraient à s'élever entre les Hautes Parties Contractantes ou entre l'une et l'autre d'entre Elles, ne seront jamais recherchés de part et d'autre, que par des procédés pacifiques.

ARTICLE TROIS :

Dans le cas où l'une des Hautes Parties Contractantes viendrait à contrevenir au présent traité, les autres Puissances Contractantes seraient de plein droit libérées vis-à-vis d'elle des engagements pris dans ce traité.

ARTICLE QUATRE :

Les dispositions du présent traité ne portent aucune atteinte aux droits et obligations résultant pour les Puissances Contractantes des actes internationaux antérieurs auxquels Elles sont parties.

ARTICLE CINQ :

Le présent traité sera proposé à l'accession de toutes les Puissances et n'aura force obligatoire qu'après avoir reçu une acceptation générale, à moins que les Puissances ci-après signataires, d'accord avec celles qui auront accédé, s'entendent pour en décider l'entrée en vigueur nonobstant certaines abstentions.

within the framework of existing treaties, particularly when the violation of certain of the provisions of such treaties constitutes a hostile act, solemnly declare that they condemn recourse to war and renounce it as an instrument of national policy; that is to say, as an instrument of individual, spontaneous and independent political action taken on their own initiative and not action in respect of which they might become involved through the obligation of a treaty such as the Covenant of the League of Nations or any other treaty registered with the League of Nations. They undertake on these conditions not to attack or invade one another.

ARTICLE 2

The settlement or solution of all disputes or conflicts, of whatever nature or origin, which might arise among the high contracting parties or between any two of them, shall never be sought on either side except by pacific methods.

ARTICLE 3

In case one of the high contracting parties should contravene this treaty, the other contracting powers would *ipso facto* be released with respect to that party from their obligations under this treaty.

ARTICLE 4

The provisions of this treaty in no wise affect the rights and obligations of the contracting parties resulting from prior international agreements to which they are parties.

ARTICLE 5

The present treaty will be offered for the accession of all powers and will have no binding force until it has been generally accepted unless the signatory powers in accord with those that may accede hereto shall agree to decide that it shall come into effect regardless of certain abstentions.

ARTICLE 6:

Le présent traité sera ratifié.

Les ratifications en seront déposées à; dans les trois mois à compter du dépôt des ratifications il sera porté par le Gouvernement de à la connaissance de toutes les puissances avec l'invitation d'y accéder.

Le Gouvernement de remettra à chacune des puissances signataires et des puissances ayant accédé une copie certifiée conforme des actes d'accession au fur et à mesure de leur réception.

Un an à compter de l'expiration du délai de 3 mois prévu à l'article 5 le Gouvernement de adressera un état complet des signatures et accessions à toutes les puissances ayant signé ou accédé.

En foi de quoi les Plénipotentiaires sus-nommés ont signé le présent traité et l'ont revêtu de leur sceau.

Dressé à en exemplaires, rédigés en français et en anglais et faisant également foi.

Le 1928.

ARTICLE 6

The present treaty shall be ratified.

The ratifications shall be deposited at; within three months from the date of the deposit of the ratifications it shall be communicated by the Government of to all the powers with an invitation to accede.

The Government of will transmit to each of the signatory powers and the powers that have acceded a duly certified copy of the instruments of accession as they are received

One year after the expiration of the three months' period provided in Article 5, the Government of will send out a statement of the signatories and accessions to all the powers that have signed or acceded.

In witness whereof the above-named plenipotentiaries have signed this treaty and sealed it with their seal.

Done at in copies, drawn up in French and English and having equal force.

....., 1928.

Document 12

German Note, April 27, 1928

*The German Minister of Foreign Affairs (Stresemann) to the
American Ambassador (Schurman)*

[Translation]

BERLIN, April 27, 1928.

MR. AMBASSADOR: In the note of April 13 and its enclosures your excellency informed me of the negotiations between the Government of the United States of America and the Government of France regarding the conclusion of an international pact for the outlawry of war. At the same time you asked me the question whether the German Government was disposed to conclude such a pact in accordance with the draft put forward by the Government of the United States or whether it considered certain changes in this draft necessary.

The German Government has studied the question put by you with the care appropriate to the extraordinary importance of the matter. It was possible also in this study to take into consideration the draft treaty which had been drawn up in the meantime by the French Government and handed to the participating powers. As a result of this study I have the honor to inform your excellency of the following in the name of the German Government:

The German Government welcomes most warmly the opening of negotiations for the conclusion of an international pact for the outlawry of war. The two main ideas on which are based the initiative of the French Minister of Foreign Affairs and the resulting proposal of the United States correspond fully to the principles of German policy. Germany has no higher interest than to see the possibility of armed conflicts eliminated and a development assured in the life of the nations which would guarantee the peaceful settlement of all international disputes. The conclusion of a pact such as the United States now has in view would certainly bring the nations a good deal nearer to this goal.

As the need of the nations for the assurance of peace since the World War has already led to other international agreements, the necessity arises for the states concerned to make a decision as to the relationship in which the pact now being planned would stand to these international agreements which

are already in effect. You have already, Mr. Ambassador, referred in your note to the considerations which were put forward in this connection by the French Government in its exchange of views with the Government of the United States. So far as Germany is concerned, the Covenant of the League of Nations and the Rhine pact of Locarno come into consideration as international agreements which might affect the substance of the new pact; other international obligations of this kind have not been entered into by Germany. Respect for the obligations arising from the Covenant of the League of Nations and the Rhine pact must in the opinion of the German Government remain inviolable. The German Government is, however, convinced that these obligations contain nothing which could in any way conflict with the obligations provided for in the draft treaty of the United States. On the contrary, it believes that the binding obligation not to use war as an instrument of national policy could only serve to strengthen the fundamental idea of the Covenant of the League of Nations and of the Rhine pact.

The German Government proceeds on the belief that a pact after the pattern submitted by the Government of the United States would not put in question the sovereign right of any state to defend itself. It is self-evident that if one state violates the pact the other contracting parties regain their freedom of action with reference to that state. The state affected by the violation of the pact is therefore not prevented from taking up arms on its own part against the breaker of the peace. In a pact of this kind to provide expressly for the case of a violation seems to the German Government unnecessary.

In agreement with the Government of the United States and with the French Government, the German Government is also of the opinion that the ultimate goal must be the universality of the new pact. In order to bring about this universality, the draft treaty of the United States seems to open a practical way. When the states first coming into question as signatory powers have concluded the pact it may be expected that the other states will thereupon make use of the right of adhesion which is assured to them without limitation or condition.

The German Government can accordingly declare that it is ready to conclude a pact in accordance with the proposal of

the Government of the United States and to this end to enter into the necessary negotiations with the Governments concerned. To this declaration the German Government adds, moreover, its definite expectation that the realization of a pact of such importance will not fail to make its influence felt at once in connection with the shaping of international relations. Therefore, this new guarantee for the maintenance of peace must give a real impulse to the efforts for the carrying out of general disarmament. And further still, the renunciation of war must as a necessary complement enlarge the possibilities of settling in a peaceful way the existing and potential conflicts of national interests.

Accept [etc.]

STRESEMANN

Document 13

Italian Note, May 4, 1928

*The Italian Minister of Foreign Affairs (Mussolini) to the
American Ambassador (Fletcher)*

[Translation]

Rome, May 4, 1928.

MR. AMBASSADOR: I have the honor to refer to my note of April 23d relative to the proposal of the United States Government regarding a multilateral antiwar treaty.

I hardly need to assure you that Italy, adhering to the policy which she is constantly following, has welcomed with lively sympathy this initiative and offers very willingly her cordial collaboration towards reaching an agreement.

Your excellency is aware of the fact that there is under consideration the proposal for a preliminary meeting of the legal experts of the powers whose direct interest in the proposed treaty has been enlisted. The Royal Government has adhered to this procedure, but has clearly pointed out that, in its opinion, such a meeting can only be effective if the participation of a legal expert of the Government of the United States is assured.

In accordance with this order of ideas, I beg your excellency to communicate to Mr. Kellogg the live desire of the Royal Government that the participation of the United States in the preliminary meeting mentioned above be not lacking.

I avail [etc.]

MUSSOLINI

Document 14

British Note, May 19, 1928

The British Secretary of State for Foreign Affairs (Chamberlain) to the American Ambassador (Houghton)

LONDON, May 19, 1928.

YOUR EXCELLENCY: Your note of the 13th April, containing the text of a draft treaty for the renunciation of war, together with copies of correspondence between the United States and French Governments on the subject of this treaty, has been receiving sympathetic consideration at the hands of His Majesty's Government in Great Britain. A note has also been received from the French Government, containing certain suggestions for discussion in connexion with the proposed treaty, and the German Government were good enough to send me a copy of the reply which has been made by them to the proposals of the United States Government.

2. The suggestion for the conclusion of a treaty for the renunciation of war as an instrument of national policy has evoked widespread interest in this country, and His Majesty's Government will support the movement to the utmost of their power.

3. After making a careful study of the text contained in your excellency's note and of the amended text suggested in the French note, His Majesty's Government feel convinced that there is no serious divergence between the effect of these two drafts. This impression is confirmed by a study of the text of the speech by the Secretary of State of the United States to which your excellency drew my attention, and which he delivered before the American Society of International Law on the 28th April. The aim of the United States Government, as I understand it, is to embody in a treaty a broad statement of principle, to proclaim without restriction or qualification that war shall not be used as an instrument of policy. With this aim His Majesty's Government are wholly in accord. The French proposals, equally imbued with the same purpose, have merely added an indication of certain exceptional circumstances in which the violation of that principle by one party may oblige the others to take action seeming at first sight to be inconsistent with the terms of the proposed pact. His Majesty's Government appreciate the scruples which have prompted these

suggestions by the French Government. The exact fulfilment of treaty engagements is a matter which affects the national honour; precision as to the scope of such engagements is, therefore, of importance. Each of the suggestions made by the French Government has been carefully considered from this point of view.

4. After studying the wording of Article 1 of the United States draft, His Majesty's Government do not think that its terms exclude action which a state may be forced to take in self-defence. Mr. Kellogg has made it clear in the speech to which I have referred above that he regards the right of self-defence as inalienable, and His Majesty's Government are disposed to think that on this question no addition to the text is necessary.

5. As regards the text of Article 2 no appreciable difference is found between the American and French proposals. His Majesty's Government are, therefore, content to accept the former if, as they understand to be the case, a dispute "among the high contracting parties" is a phrase wide enough to cover a dispute between any two of them.

6. The French note suggests the addition of an article providing that violation of the treaty by one of the parties should release the remainder from their obligations under the treaty towards that party. His Majesty's Government are not satisfied that, if the treaty stood alone, the addition of some such provision would not be necessary. Mr. Kellogg's speech, however, shows that he put forward for acceptance the text of the proposed treaty upon the understanding that violation of the undertaking by one party would free the remaining parties from the obligation to observe its terms in respect of the treaty-breaking state.

7. If it is agreed that this is the principle which will apply in the case of this particular treaty, His Majesty's Government are satisfied and will not ask for the insertion of any amendment. Means can no doubt be found without difficulty of placing this understanding on record in some appropriate manner so that it may have equal value with the terms of the treaty itself.

8. The point is one of importance because of its bearing on the treaty engagements by which His Majesty's Government are already bound. The preservation of peace has been the chief concern of His Majesty's Government and the prime object

of all their endeavours. It is the reason why they have given ungrudging support to the League of Nations and why they have undertaken the burden of the guarantee embodied in the Locarno treaty. The sole object of all these engagements is the elimination of war as an instrument of national policy, just as it is the purpose of the peace pact now proposed. It is because the object of both is the same that there is no real antagonism between the treaty engagements which His Majesty's Government have already accepted and the pact which is now proposed. The machinery of the covenant and of the treaty of Locarno, however, go somewhat further than a renunciation of war as a policy, in that they provide certain sanctions for a breach of their obligations. A clash might thus conceivably arise between the existing treaties and the proposed pact unless it is understood that the obligations of the new engagement will cease to operate in respect of a party which breaks its pledges and adopts hostile measures against one of its co-contractants.

9. For the Government of this country respect for the obligations arising out of the Covenant of the League of Nations and out of the Locarno treaties is fundamental. Our position in this regard is identical with that of the German Government as indicated in their note of the 27th April. His Majesty's Government could not agree to any new treaty which would weaken or undermine these engagements on which the peace of Europe rests. Indeed, public interest in this country in the scrupulous fulfilment of these engagements is so great that His Majesty's Government would for their part prefer to see some such provision as Article 4 of the French draft embodied in the text of the treaty. To this we understand there will be no objection. Mr. Kellogg has made it clear in the speech to which I have drawn attention that he had no intention by the terms of the new treaty of preventing the parties to the Covenant of the League or to the Locarno treaty from fulfilling their obligations.

10. The language of Article 1, as to the renunciation of war as an instrument of national policy, renders it desirable that I should remind your excellency that there are certain regions of the world the welfare and integrity of which constitute a special and vital interest for our peace and safety. His Majesty's Government have been at pains to make it clear in the past that interference with these regions cannot be suffered.

Their protection against attack is to the British Empire a measure of self-defence. It must be clearly understood that His Majesty's Government in Great Britain accept the new treaty upon the distinct understanding that it does not prejudice their freedom of action in this respect. The Government of the United States have comparable interests any disregard of which by a foreign power they have declared that they would regard as an unfriendly act. His Majesty's Government believe, therefore, that in defining their position they are expressing the intention and meaning of the United States Government.

11. As regards the measure of participation in the new treaty before it would come into force, His Majesty's Government agree that it is not necessary to wait until all the nations of the world have signified their willingness to become parties. On the other hand, it would be embarrassing if certain States in Europe with whom the proposed participants are already in close treaty relations were not included among the parties. His Majesty's Government see no reason, however, to doubt that these states will gladly accept its terms. Universality would, in any case, be difficult of attainment, and might even be inconvenient, for there are some states whose governments have not yet been universally recognized, and some which are scarcely in a position to ensure the maintenance of good order and security within their territories. The conditions for the inclusion of such states among the parties to the new treaty is a question to which further attention may perhaps be devoted with advantage. It is, however, a minor question as compared with the attainment of the more important purpose in view.

12. After this examination of the terms of the proposed treaty and of the points to which it gives rise, your excellency will realise that His Majesty's Government find nothing in their existing commitments which prevents their hearty cooperation in this movement for strengthening the foundations of peace. They will gladly cooperate in the conclusion of such a pact as is proposed and are ready to engage with the interested Governments in the negotiations which are necessary for the purpose.

13. Your excellency will observe that the detailed arguments in the foregoing paragraphs are expressed on behalf of His Majesty's Government in Great Britain. It will, however, be appreciated that the proposed treaty, from its very nature, is not one which concerns His Majesty's Government in Great

Britain alone, but is one in which they could not undertake to participate otherwise than jointly and simultaneously with His Majesty's Governments in the Dominions and the Government of India. They have, therefore, been in communication with those Governments, and I am happy to be able to inform your excellency that as a result of the communications which have passed it has been ascertained that they are all in cordial agreement with the general principle of the proposed treaty. I feel confident, therefore, that on receipt of an invitation to participate in the conclusion of such a treaty, they, no less than His Majesty's Government in Great Britain, will be prepared to accept the invitation.

I have [etc.]

AUSTEN CHAMBERLAIN

Document 15

American Note to the Dominions and India, May 22, 1928

*The Minister in Canada (Phillips) to the Secretary of State for
External Affairs (MacKenzie King)*¹

OTTAWA, May 22, 1928.

In the note which he addressed to the American Ambassador at London on May 19, 1928, Sir Austen Chamberlain was good enough to inform my Government that His Majesty's Government in Great Britain had been in communication with his Majesty's Governments in the Dominions and with the Government of India, and had ascertained that they were all in cordial agreement with the general principle of the multilateral treaty for the renunciation of war which the Government of the United States proposed on April 13, 1928. Sir Austen added that he felt confident, therefore, that His Majesty's Governments in the Dominions and the Government of India were prepared to accept an invitation to participate in the conclusion of such a treaty as that proposed by the Government of the United States.

I have been instructed to state to your excellency that my Government has received this information with the keenest satisfaction. My Government has hoped from the outset of the present negotiations that the Governments of the Dominions and the Government of India would feel disposed to become parties to the suggested antiwar treaty. It is, moreover, most gratifying to the Government of the United States to learn that His Majesty's Governments in the Dominions and the Government of India are so favorably inclined towards the treaty for the renunciation of war which my Government proposed on April 13, 1928, as to wish to participate therein individually and as original signatories, and my Government, for its part, is most happy to accede to the suggestion contained in Sir Austen Chamberlain's note of May 19, 1928, to the American Ambassador at London.

Accordingly I have been instructed to extend to His Majesty's Government in Canada, in the name of the Govern-

¹ A similar note was addressed by the Minister in the Irish Free State to the Minister for External Affairs, and by the Ambassador in Great Britain to the Secretary of State for Foreign Affairs, for transmission to Australia, New Zealand, South Africa, and India.

ment of the United States, a cordial invitation to become one of the original parties to the treaty for the renunciation of war which is now under consideration. Pursuant to my instructions I also have the honor to inform you that the Government of the United States will address to His Majesty's Government in Canada, at the same time and in the same manner as to the other governments whose participation in the proposed treaty in the first instance is contemplated, any further communications which it may make on the subject of the treaty after it has been acquainted with the views of all the governments to which its note of April 13, 1928, was addressed.

Document 16

Japanese Note, May 26, 1928

*The Japanese Minister of Foreign Affairs (Tanaka) to the
American Ambassador (MacVeagh)*

TOKYO, May 26, 1928.

MR. AMBASSADOR: I have the honor to acknowledge the receipt of your excellency's note No. 336 of April 13 last, transmitting to me under instructions from the Government of the United States the preliminary draft of a proposed multi-lateral treaty representing in a general way a form of treaty which the Government of the United States is prepared to sign with the French, British, German, Italian, and Japanese Governments and any other governments similarly disposed, with the object of securing the renunciation of war. At the same time your excellency enclosed a copy of the correspondence recently exchanged between the Governments of the United States and the French Republic commencing with a proposal put forward by Monsieur Briand in June 1927; and you intimated that the Government of the United States desired to be informed whether the Japanese Government were in a position to give favorable consideration to the conclusion of such a treaty as that of which you enclosed a draft—and if not, what specific modification in the text would make it acceptable.

I beg to inform your excellency that the Government of Japan sympathize warmly with the high and beneficent aims of the proposal now made by the United States, which they take to imply the entire abolition of the institution of war, and that they will be glad to render their most cordial cooperation towards the attainment of that end.

The proposal of the United States is understood to contain nothing that would refuse to independent states the right of self-defense, and nothing which is incompatible with the obligations of agreements guaranteeing the public peace, such as are embodied in the Covenant of the League of Nations and the treaties of Locarno. Accordingly, the Imperial Government firmly believe that unanimous agreement on a mutually acceptable text for such a treaty as is contemplated is well capable of realization by discussion between the six powers referred to, and they would be happy to collaborate with cordial good will in the discussions with the purpose of securing what they

are persuaded is the common desire of all the peoples of the world—namely, the cessation of wars and the definite establishment among the nations of an era of permanent and universal peace.

I avail [etc.]

BARON GIICHI TANAKA

Document 17

Note of New Zealand, May 30, 1928

The British Secretary of State for Foreign Affairs (Chamberlain), on behalf of the Government of New Zealand, to the American Chargé (Atherton)

LONDON, May 30, 1928.

SIR: In the note which Mr. Houghton was so good as to address to me on May 22d he extended on behalf of the Government of the United States an invitation to His Majesty's Governments in the Commonwealth of Australia, New Zealand and in the Union of South Africa, as well as to the Government of India, to participate individually and as original signatories in the treaty for the renunciation of war which is now under consideration.

2. I now have the honor to inform you that His Majesty's Government in New Zealand have received with warm appreciation the invitation addressed to New Zealand to become an original party to the treaty proposed by the Government of the United States for the renunciation of war. His Majesty's Government in New Zealand welcome the opportunity, in co-operation with His Majesty's Governments in other parts of the British Empire, of associating themselves with the Government of the United States in this movement to add greater security to the peace of the world and they will be happy to share in any negotiations leading to the conclusion of the proposed treaty.

I have [etc.]

(For the Secretary of State)

R. L. CRAIGIE

Document 18

Note of the Irish Free State, May 30, 1928

The Irish Free State Minister for External Affairs (McGilligan) to the American Minister (Sterling)

DUBLIN, May 30, 1928.

EXCELLENCY: I have the honor to acknowledge receipt of your excellency's note of 22nd May referring to the draft treaty for the renunciation of war and extending an invitation from your Government to the Government of the Irish Free State to become one of the original parties to the proposed treaty.

The Government of the Irish Free State warmly welcome the action of the United States Government in initiating this further advance towards the maintenance of general peace. They are in cordial agreement with the general principle of the draft treaty which they confidently hope will ensure the peaceful settlement of future international disputes.

Sharing the view expressed by the Secretary of State of the United States in his speech before the American Society of International Law that nothing in the draft treaty is inconsistent with the Covenant of the League of Nations, the Government of the Irish Free State accept unreservedly the invitation of the United States Government to become a party to the treaty jointly with the other states similarly invited.

The Government of the Irish Free State will be glad therefore to participate in, and to further by every possible means, the negotiations which may be necessary for the conclusion of the pact.

Accept [etc.]

P. MCGILLIGAN

Document 19

Note of Canada, May 30, 1928

The Canadian Secretary of State for External Affairs (MacKenzie King) to the American Minister (Phillips)

OTTAWA, May 30, 1928.

SIR: I have the honour to acknowledge your note of May 22d, extending to His Majesty's Government in Canada, in the name of the Government of the United States, an invitation to become one of the original parties to the treaty for the renunciation of war now under consideration.

The Government of Canada is certain that it speaks for the whole Canadian people in welcoming the outcome, in the proposed multilateral pact, of the discussion initiated almost a year ago between the Governments of France and of the United States. It is pleased to find that in this attitude it is in accord with all His Majesty's other governments. The proposals of the United States Government, by their directness and simplicity, afford to the peoples of the world a new and notable opportunity of ensuring lasting peace.

The Dominion of Canada, fortunate in its ties of kinship and allegiance as well as in its historic and neighbourly friendships, and with half a continent as its heritage, is less exposed to the danger of attack or the temptation to aggression than many other lands. Yet the Great War, with its burdens of suffering and of loss, brought home the danger which all countries share, and led Canada to turn with hope to the efforts to build up effective barriers against war which took shape in the League of Nations; it will welcome the present proposals as a manifestation of the same striving for peace.

The question whether the obligations of the Covenant of the League would conflict in any way with the obligations of the proposed pact has been given careful consideration. His Majesty's Government in Canada regards the League, with all its limitations, as an indispensable and continuing agency of international understanding, and would not desire to enter upon any course which would prejudice its effectiveness. It is, however, convinced that there is no conflict either in the letter or in the spirit between the Covenant and the multilateral pact, or between the obligations assumed under each.

The pre-eminent value of the League lies in its positive and

preventive action. In bringing together periodically the representatives of fifty states, it builds up barriers against war by developing a spirit of conciliation, an acceptance of publicity in international affairs, a habit of cooperation in common ends, and a permanently available machinery for the adjustment of differences. It is true that the Covenant also contemplates the application of sanctions in the event of a member state going to war, if in so doing it has broken the pledges of the Covenant to seek a peaceful solution of disputes. Canada has always opposed any interpretation of the Covenant which would involve the application of these sanctions automatically or by the decision of other states. It was on the initiative of Canada that the Fourth Assembly, with a single negative vote, accepted the interpretative resolution to which the Secretary of State of the United States recently referred, indicating that it is for the constitutional authorities of each state to determine in what degree it is bound to assure the execution of the obligations of this article by employment of its military forces. The question of sanctions has received further consideration by later Assemblies. It is plain that the full realization of the ideal of joint economic or military pressure upon an outlaw power, upon which some of the founders of the League set great store, will require either an approach to the universality of the League contemplated when the Covenant was being drawn, or an adjustment of the old rules of neutrality to meet the new conditions of cooperative defence.

In any event, if, as would seem to be the case, the proposed multilateral treaty does not impose any obligation upon a signatory in relation to a state which has not signed the treaty or has broken it, any decision taken to apply sanctions against a member of the League which has made war in violation of its Covenant pledges would not appear to conflict with the obligations of the treaty.

His Majesty's Government in Canada will have pleasure in cooperating in any future negotiations with a view to becoming a signatory to a treaty such as is proposed by the Government of the United States in the invitation which it has extended, and to recommending its acceptance to the Canadian Parliament.

Accept [etc.]

W. L. MACKENZIE KING

Document 20

Note of Australia, June 2, 1928

The British Secretary of State for Foreign Affairs (Chamberlain), on behalf of the Commonwealth of Australia, to the American Chargé (Atherton)

LONDON, *June 2, 1928.*

SIR: In the note which Mr. Houghton was so good as to address to me on May 22d last, he extended on behalf of the Government of the United States an invitation to His Majesty's Government in the Commonwealth of Australia to participate individually and as an original signatory in the treaty for the renunciation of war which is now under consideration.

2. I now have the honour to inform you that His Majesty's Government in the Commonwealth of Australia have received with appreciation the invitation to participate as an original party in the treaty for the renunciation of war which has been proposed by the Government of the United States of America. His Majesty's Government in the Commonwealth of Australia have carefully and sympathetically examined the draft treaty submitted to them together with the correspondence that has so far been exchanged between the interested governments. They believe that a treaty such as that proposed would be a further material safeguard to the peace of the world and they will be happy to cooperate to the fullest extent in its successful conclusion.

I have [etc.]

(For the Secretary of State)

R. L. CRAIGIE

Document 21

Note of India, June 11, 1928

The British Secretary of State for Foreign Affairs (Chamberlain), on behalf of the Government of India, to the American Chargé (Atherton)

LONDON, June 11, 1928.

SIR: In the note which Mr. Houghton was so good as to address to me on the 22d ultimo, he extended on behalf of the Government of the United States, an invitation to the Government of India to participate individually and as an original signatory in the treaty for the renunciation of war which is now under consideration.

2. I now have the honour to inform you that the Government of India have requested that an expression of their warm thanks may be conveyed to the United States Government for this invitation which they are happy to accept. I have the honour to add that the Government of India desire to associate themselves with the note which I had the honour to address to Mr. Houghton on the 19th ultimo.

I have [etc.]

(For the Secretary of State)
R. L. CRAIGIE

Document 22

Note of South Africa, June 15, 1928

The British Secretary of State for Foreign Affairs (Chamberlain), on behalf of the Union of South Africa, to the American Chargé (Atherton)

LONDON, June 15, 1928.

SIR: With reference to the note which Mr. Houghton was so good as to address to me on the 22d May conveying an invitation to His Majesty's Government in the Union of South Africa to become an original party to the proposed treaty for the renunciation of war, I have the honour to inform you that the following message has been received by telegraph from General Hertzog, Minister of External Affairs of the Union of South Africa, for communication to you:

Through the good offices of His Majesty's Government in the United Kingdom the contents of the note addressed by your excellency to his excellency the British Secretary of State for Foreign Affairs on the 22d May were duly conveyed to me. On behalf of His Majesty's Government in the Union of South Africa I beg to state that the cordial invitation of the Government of the United States extended to His Majesty's Government in the Union of South Africa to participate individually and as an original signatory in the treaty for the renunciation of war which the United States Government proposed to various governments on the 13th April last, is highly appreciated, and that His Majesty's Government in the Union of South Africa will gladly take part therein, as invited, together with the other governments whose participation in the proposed treaty was invited in the first instance.

In expressing their willingness to be a party to the proposed treaty His Majesty's Government in the Union of South Africa take it for granted—

- (a) That it is not intended to deprive any party to the proposed treaty of any of its natural right of legitimate self-defence;
- (b) That a violation of any one of the parties of any of the provisions of the proposed treaty will free the other parties from obligation to observe its terms in respect of the party committing such violation; and

- (c) That provision will be made for rendering it quite clear that it is not intended that the Union of South Africa, by becoming a party to the proposed treaty would be precluded from fulfilling as a member of the League of Nations its obligations towards the other members thereof under the provisions of the Covenant of the League.

I have [etc.]

(For the Secretary of State)
R. L. CRAIGIE

Document 23

American Note, June 23, 1928

Note of the Government of the United States to the Governments of Australia, Belgium, Canada, Czechoslovakia, France, Germany, Great Britain, India, Irish Free State, Italy, Japan, New Zealand, Poland, and South Africa, June 23, 1928

It will be recalled that, pursuant to the understanding reached between the Government of France and the Government of the United States, the American Ambassadors at London, Berlin, Rome and Tokyo transmitted on April 13, 1928, to the Governments to which they were respectively accredited the text of M. Briand's original proposal of June 20, 1927, together with copies of the notes subsequently exchanged by France and the United States on the subject of a multilateral treaty for the renunciation of war. At the same time the Government of the United States also submitted for consideration a preliminary draft of a treaty representing in a general way the form of treaty which it was prepared to sign, and inquired whether the Governments thus addressed were in a position to give favorable consideration thereto. The text of the identic notes of April 13, 1928, and a copy of the draft treaty transmitted therewith, were also brought to the attention of the Government of France by the American Ambassador at Paris.

It will likewise be recalled that on April 20, 1928, the Government of the French Republic circulated among the other interested governments, including the Government of the United States, an alternative draft treaty, and that in an address which he delivered on April 28, 1928, before the American Society of International Law, the Secretary of State of the United States explained fully the construction placed by my Government upon the treaty proposed by it, referring as follows to the six major considerations emphasized by France in its alternative draft treaty and prior diplomatic correspondence with my Government:

(1) *Self-defense.* There is nothing in the American draft of an antiwar treaty which restricts or impairs in any way the right of self-defense. That right is inherent in every sovereign state and is implicit in every treaty. Every nation is free

at all times and regardless of treaty provisions to defend its territory from attack or invasion and it alone is competent to decide whether circumstances require recourse to war in self-defense. If it has a good case, the world will applaud and not condemn its action. Express recognition by treaty of this inalienable right, however, gives rise to the same difficulty encountered in any effort to define aggression. It is the identical question approached from the other side. Inasmuch as no treaty provision can add to the natural right of self-defense, it is not in the interest of peace that a treaty should stipulate a juristic conception of self-defense since it is far too easy for the unscrupulous to mold events to accord with an agreed definition.

(2) *The League Covenant.* The Covenant imposes no affirmative primary obligation to go to war. The obligation, if any, is secondary and attaches only when deliberately accepted by a state. Article 10 of the Covenant has, for example, been interpreted by a resolution submitted to the Fourth Assembly but not formally adopted owing to one adverse vote to mean that "it is for the constitutional authorities of each member to decide, in reference to the obligation of preserving the independence and the integrity of the territory of members, in what degree the member is bound to assure the execution of this obligation by employment of its military forces." There is, in my opinion, no necessary inconsistency between the Covenant and the idea of an unqualified renunciation of war. The Covenant can, it is true, be construed as authorizing war in certain circumstances but it is an authorization and not a positive requirement.

(3) *The treaties of Locarno.* If the parties to the treaties of Locarno are under any positive obligation to go to war, such obligation certainly would not attach until one of the parties has resorted to war in violation of its solemn pledges thereunder. It is therefore obvious that if all the parties to the Locarno treaties become parties to the multilateral antiwar treaty proposed by the United States, there would be a double assurance that the Locarno treaties would not be violated by recourse to arms. In such event it would follow that resort to war by any state in violation of the Locarno treaties would also be a breach of the multilateral antiwar treaty and the other parties to the antiwar treaty would thus as a matter of law be automatically released from their obligations thereunder and

free to fulfil their Locarno commitments. The United States is entirely willing that all parties to the Locarno treaties should become parties to its proposed antiwar treaty either through signature in the first instance or by immediate accession to the treaty as soon as it comes into force in the manner provided in Article 3 of the American draft, and it will offer no objection when and if such a suggestion is made.

(4) *Treaties of neutrality.* The United States is not informed as to the precise treaties which France has in mind and cannot therefore discuss their provisions. It is not unreasonable to suppose, however, that the relations between France and the states whose neutrality she has guaranteed are sufficiently close and intimate to make it possible for France to persuade such states to adhere seasonably to the antiwar treaty proposed by the United States. If this were done no party to the antiwar treaty could attack the neutralized states without violating the treaty and thereby automatically freeing France and the other powers in respect of the treaty-breaking state from the obligations of the antiwar treaty. If the neutralized states were attacked by a state not a party to the antiwar treaty, the latter treaty would of course have no bearing and France would be as free to act under the treaties guaranteeing neutrality as if she were not a party to the antiwar treaty. It is difficult to perceive, therefore, how treaties guaranteeing neutrality can be regarded as necessarily preventing the conclusion by France or any other power of a multilateral treaty for the renunciation of war.

(5) *Relations with a treaty-breaking state.* As I have already pointed out, there can be no question as a matter of law that violation of a multilateral antiwar treaty through resort to war by one party thereto would automatically release the other parties from their obligations to the treaty-breaking state. Any express recognition of this principle of law is wholly unnecessary.

(6) *Universality.* From the beginning it has been the hope of the United States that its proposed multilateral antiwar treaty should be world-wide in its application, and appropriate provision therefor was made in the draft submitted to the other governments on April 13. From a practical standpoint it is clearly preferable, however, not to postpone the coming into force of an antiwar treaty until all the nations of the world can agree upon the text of such a treaty and cause it to be ratified.

For one reason or another a state so situated as to be no menace to the peace of the world might obstruct agreement or delay ratification in such manner as to render abortive the efforts of all the other powers. It is highly improbable, moreover, that a form of treaty acceptable to the British, French, German, Italian and Japanese Governments, as well as to the United States, would not be equally acceptable to most, if not all, of the other powers of the world. Even were this not the case, however, the coming into force among the above-named six powers of an effective antiwar treaty and their observance thereof would be a practical guaranty against a second world war. This in itself would be a tremendous service to humanity and the United States is not willing to jeopardize the practical success of the proposal which it has made by conditioning the coming into force of the treaty upon prior universal or almost universal acceptance.

The British, German, Italian and Japanese Governments have now replied to my Government's notes of April 13, 1928, and the Governments of the British Dominions and of India have likewise replied to the invitations addressed to them on May 22, 1928, by my Government pursuant to the suggestion conveyed in the note of May 19, 1928, from His Majesty's Government in Great Britain. None of these Governments has expressed any dissent from the above-quoted construction, and none has voiced the least disapproval of the principle underlying the proposal of the United States for the promotion of world peace. Neither has any of the replies received by the Government of the United States suggested any specific modification of the text of the draft treaty proposed by it on April 13, 1928, and my Government, for its part, remains convinced that no modification of the text of its proposal for a multilateral treaty for the renunciation of war is necessary to safeguard the legitimate interests of any nation. It believes that the right of self-defense is inherent in every sovereign state and implicit in every treaty. No specific reference to that inalienable attribute of sovereignty is therefore necessary or desirable. It is no less evident that resort to war in violation of the proposed treaty by one of the parties thereto would release the other parties from their obligations under the treaty towards the belligerent state. This principle is well recognized. So far as the Locarno treaties are concerned, my Government

has felt from the very first that participation in the antiwar treaty by the powers which signed the Locarno agreements, either through signature in the first instance or thereafter, would meet every practical requirement of the situation, since in such event no state could resort to war in violation of the Locarno treaties without simultaneously violating the antiwar treaty, thus leaving the other parties thereto free, so far as the treaty-breaking state is concerned. As your excellency knows, the Government of the United States has welcomed the idea that all parties to the treaties of Locarno should be among the original signatories of the proposed treaty for the renunciation of war and provision therefor has been made in the draft treaty¹ which I have the honor to transmit herewith. The same procedure would cover the treaties guaranteeing neutrality to which the Government of France has referred. Adherence to the proposed treaty by all parties to these other treaties would completely safeguard their rights since subsequent resort to war by any of them or by any party to the antiwar treaty would violate the latter treaty as well as the neutrality treaty, and thus leave the other parties to the antiwar treaty free, so far as the treaty-breaking state is concerned. My Government would be entirely willing, however, to agree that the parties to such neutrality treaties should be original signatories of the multilateral antiwar treaty, and it has no reason to believe that such an arrangement would meet with any objection on the part of the other Governments now concerned in the present negotiations.

While my Government is satisfied that the draft treaty proposed by it on April 13, 1928, could be properly accepted by the powers of the world without change except for including among the original signatories the British Dominions, India, all parties to the treaties of Locarno and, it may be, all parties to the neutrality treaties mentioned by the Government of France, it has no desire to delay or complicate the present negotiations by rigidly adhering to the precise phraseology of that draft, particularly since it appears that by modifying the draft in form though not in substance, the points raised by other Governments can be satisfactorily met and general agreement upon the text of the treaty to be signed be promptly reached. The Government of the United States has therefore decided to submit to the fourteen other Governments now concerned in these nego-

¹ Document 24.

tiations a revised draft of a multilateral treaty for the renunciation of war. The text of this revised draft is identical with that of the draft proposed by the United States on April 13, 1928, except that the preamble now provides that the British Dominions, India, and all parties to the treaties of Locarno are to be included among the powers called upon to sign the treaty in the first instance, and except that the first three paragraphs of the preamble have been changed to read as follows:

Deeply sensible of their solemn duty to promote the welfare of mankind;

Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated;

Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty;

The revised preamble thus gives express recognition to the principle that if a state resorts to war in violation of the treaty, the other contracting parties are released from their obligations under the treaty to that state; it also provides for participation in the treaty by all parties to the treaties of Locarno, thus making it certain that resort to war in violation of the Locarno treaties would also violate the present treaty and release not only the other signatories of the Locarno treaties but also the other signatories to the antiwar treaty from their obligations to the treaty-breaking state. Moreover, as stated above, my Government would be willing to have included among the original signatories the parties to the neutrality treaties referred to by the Government of the French Republic, although it believes that the interests of those states would be adequately safeguarded if, instead of signing in the first instance, they should choose to adhere to the treaty.

In these circumstances I have the honor to transmit herewith for the consideration of your excellency's Government a draft of a multilateral treaty for the renunciation of war containing the changes outlined above. I have been instructed to state in

this connection that the Government of the United States is ready to sign at once a treaty in the form herein proposed, and to express the fervent hope that the Government of will be able promptly to indicate its readiness to accept, without qualification or reservation, the form of treaty now suggested by the United States. If the Governments of Australia, Belgium, Canada, Czechoslovakia, France, Germany, Great Britain, India, the Irish Free State, Italy, Japan, New Zealand, Poland, South Africa and the United States can now agree to conclude this antiwar treaty among themselves, my Government is confident that the other nations of the world will, as soon as the treaty comes into force, gladly adhere thereto, and that this simple procedure will bring mankind's age-long aspirations for universal peace nearer to practical fulfilment than ever before in the history of the world.

I have the honor to state in conclusion that the Government of the United States would be pleased to be informed at as early a date as may be convenient whether your excellency's Government is willing to join with the United States and other similarly disposed Governments in signing a definitive treaty for the renunciation of war in the form transmitted herewith.

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Document 24

The Second American Draft, June 23, 1928

Text of draft treaty

The President of the United States of America, the President of the French Republic, His Majesty the King of the Belgians, the President of the Czechoslovak Republic, His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, the President of the German Reich, His Majesty the King of Italy, His Majesty the Emperor of Japan, the President of the Republic of Poland;

Deeply sensible of their solemn duty to promote the welfare of mankind;

Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated;

Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty;

Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavor and by adhering to the present treaty as soon as it comes into force bring their peoples within the scope of its beneficent provisions, thus uniting the civilized nations of the world in a common renunciation of war as an instrument of their national policy;

Have decided to conclude a treaty and for that purpose have appointed as their respective plenipotentiaries:

The President of the United States of America:.....

The President of the French Republic:.....

His Majesty the King of the Belgians:.....

The President of the Czechoslovak Republic:.....

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India:

For Great Britain and Northern Ireland and all parts of the British Empire which are not separate members of the League of Nations:.....

For the Dominion of Canada:.....
 For the Commonwealth of Australia:.....
 For the Dominion of New Zealand:.....
 For the Union of South Africa:.....
 For the Irish Free State:.....
 For India:.....

The President of the German Reich:.....
 His Majesty the King of Italy:.....
 His Majesty the Emperor of Japan:.....
 The President of the Republic of Poland:.....

Who, having communicated to one another their full powers found in good and due form have agreed upon the following articles:

ARTICLE I

The high contracting parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another

ARTICLE 2

The high contracting parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

ARTICLE 3

The present treaty shall be ratified by the high contracting parties named in the preamble in accordance with their respective constitutional requirements, and shall take effect as between them as soon as all their several instruments of ratification shall have been deposited at

This treaty shall, when it has come into effect as prescribed in the preceding paragraph, remain open as long as may be necessary for adherence by all the other powers of the world. Every instrument evidencing the adherence of a power shall be deposited at and the treaty shall immediately upon such deposit become effective as between the power thus adhering and the other powers parties hereto.

It shall be the duty of the Government of to furnish each Government named in the preamble and every Government subsequently adhering to this treaty with a certified copy of the treaty and of every instrument of ratification or adherence. It shall also be the duty of the Government of telegraphically to notify such Governments immediately upon the deposit with it of each instrument of ratification or adherence.

In faith whereof the respective plenipotentiaries have signed this treaty in the French and English languages, both texts having equal force, and hereunto affix their seals.

Done at the day of in the year of our Lord one thousand nine hundred and twenty

Document 25

German Note, July 11, 1928

The German State Secretary (Schubert) to the American Ambassador (Schurman)

[Translation]

BERLIN, July 11, 1928.

EXCELLENCY: I acknowledge the receipt of your excellency's note of June 23, 1928, regarding the conclusion of an international pact for the renunciation of war, and have the honor to reply thereto as follows on behalf of the German Government:

The German Government has examined with the greatest care the contents of the note and the revised draft of the pact which was enclosed. The Government is pleased to state that the standpoint of the Government of the United States of America as set forth in the note corresponds with the fundamental German conception as it was communicated in the note of April 27, 1928. The German Government also agrees to the changes in the preamble of the draft of the pact. It is therefore pleased to be able to state that it takes cognizance of the statements made by the Government of the United States of America contained in your excellency's note of June 23, that it agrees to the interpretation which is given therein to the provisions of the proposed pact, and that it is accordingly ready to sign this pact in the form now proposed.

Accept [etc.]

SCHUBERT

Document 26

French Note, July 14, 1928

The French Minister of Foreign Affairs (Briand) to the American Ambassador (Herrick)

[Translation]

PARIS, July 14, 1928.

EXCELLENCY: By your letter of June 23 last your excellency was good enough to transmit to me a revised text of the draft treaty for the renunciation of war, accompanied by the interpretations given to it by the Government of the United States.

I beg you to convey to the Government of the United States all the interest with which the Government of the Republic has taken cognizance of this new communication, which is suited to facilitate the signature of the treaty whose successful conclusion is equally close to the hearts of the French and American nations.

First of all it follows from the new preamble that the proposed treaty indeed aims at the perpetuation of the pacific and friendly relations under the contractual conditions in which they are today established between the interested nations; that it is essentially a question for the signatory powers of renouncing war "as an instrument of their national policy," and also that the signatory power which hereafter might seek to promote its own national interests by itself resorting to war, should be denied the benefits of the treaty.

The Government of the Republic is happy to declare that it is in accord with these new stipulations.

The Government of the Republic is happy, moreover, to take note of the interpretations which the Government of the United States gives to the new treaty with a view to satisfying the various observations which had been formulated from the French point of view.

These interpretations may be summarized as follows:

Nothing in the new treaty restrains or compromises in any manner whatsoever the right of self-defense. Each nation in this respect will always remain free to defend its territory against attack or invasion; it alone is competent to decide whether circumstances require recourse to war in self-defense.

Secondly, none of the provisions of the new treaty is in opposition to the provisions of the Covenant of the League

of Nations nor with those of the Locarno treaties or the treaties of neutrality.

Moreover, any violation of the new treaty by one of the contracting parties would automatically release the other contracting parties from their obligations to the treaty-breaking state.

Finally, the signature which the Government of the United States has now offered to all the signatory powers of the treaties concluded at Locarno and which it is disposed to offer to all powers parties to treaties of neutrality, as well as the adherence made possible to other powers, is of a nature to give the new treaty, in as full measure as can practically be desired, the character of generality which accords with the views of the Government of the Republic.

Thanks to the clarification given by the new preamble and thanks, moreover, to the interpretations given to the treaty, the Government of the Republic congratulates itself that the new convention is compatible with the obligations of existing treaties to which France is otherwise a contracting party, and the integral respect of which of necessity is imperatively imposed upon her by good faith and loyalty.

In this situation and under these conditions, the Government of the Republic is happy to be able to declare to the Government of the United States that it is now entirely disposed to sign the treaty as proposed by the letter of your excellency of June 23, 1928.

At the moment of thus assuring its contribution to the realization of a long-matured project, all the moral significance of which it had gauged from the beginning, the Government of the Republic desires to render homage to the generous spirit in which the Government of the United States has conceived this new manifestation of human fraternity, which eminently conforms to the profound aspirations of the French people as well as of the American people and responds to the sentiment, more and more widely shared among peoples, of international solidarity.

Please accept [etc.]

ARISTIDE BRIAND

Document 27

Note of the Irish Free State, July 14, 1928

The Irish Free State Minister for External Affairs (McGilligan) to the American Minister (Sterling)

DUBLIN, July 14, 1928.

EXCELLENCY: Your excellency's note of the 23d June enclosing a revised draft of proposed treaty for the renunciation of war has been carefully studied by the Government of the Irish Free State.

As I informed you in my note of the 30th May, the Government of the Irish Free State were prepared to accept unreservedly the draft treaty proposed by your Government on the 13th April, holding, as they did, that neither their right of self-defense nor their commitments under the Covenant of the League of Nations were in any way prejudiced by its terms.

The draft treaty as revised is equally acceptable to the Government of the Irish Free State, and I have the honour to inform you that they are prepared to sign it in conjunction with such other governments as may be so disposed. As the effectiveness of the proposed treaty as an instrument for the suppression of war depends to a great extent upon its universal application, the Government of the Irish Free State hope that the treaty may meet with the approbation of the other governments to whom it has been sent and that it may subsequently be accepted by all the other powers of the world.

Accept [etc.]

P. MCGILLIGAN

Document 28

Italian Note, July 15, 1928

*The Italian Minister of Foreign Affairs (Mussolini) to the
American Ambassador (Fletcher)*

[Translation]

ROME, July 15, 1928.

EXCELLENCY: I have the honor to refer to the letter which, under instructions of your Government, your excellency addressed to me under date of the 23d of June last and to ask your excellency to inform your Government as follows:

The Royal Government, which has attentively examined the last draft of a treaty for the elimination of war proposed by the United States, takes note of and agrees with the interpretation of the said treaty which the Government of the United States sets forth in the above-mentioned note of June 23 last and on this premise declares that it is disposed to proceed to the signature thereof.

I am happy [etc.]

MUSSOLINI

Document 29

Note of Canada, July 16, 1928

The Canadian Secretary of State for External Affairs (MacKenzie King) to the American Minister (Phillips)

OTTAWA, July 16, 1928.

SIR: I desire to acknowledge your note of June 23 and the revised draft which it contained of the treaty for the renunciation of war, and to state that His Majesty's Government in Canada cordially accepts the treaty as revised and is prepared to participate in its signature.

Accept [etc.]

W. L. MACKENZIE KING

Document 30

Note of Belgium, July 17, 1928

The Belgian Minister of Foreign Affairs (Hyman) to the American Ambassador (Gibson)

[Translation]

BRUSSELS, July 17, 1928.

MR. AMBASSADOR: The Government of the King has examined with lively sympathy the letter of June 23 in which, acting under instructions from your Government, you have been good enough to invite Belgium to conclude a multilateral treaty providing that the signatory states bind themselves to renounce war as an instrument of national policy.

Belgium is deeply attached to peace. She has always worked actively for the realization of movements tending to consolidate peace. She is therefore happy to pay her tribute to the idea inspiring the draft treaty.

The text prepared by the Government of Washington commands the full approbation of the Royal Government. This Government notes with satisfaction the explanations and interpretations contained in your excellency's letter. It is pleased to note that the proposed pact will maintain unimpaired the rights and obligations arising from the Covenant of the League of Nations and from the Locarno agreements which constitute for Belgium fundamental guaranties of security.

The Belgian Government highly appreciates the action of the American Government which permits it to join in the great work destined to develop the spirit of peace throughout the world and to diminish in future the risk of new catastrophes.

The Royal Government would be grateful if the Government of the United States would inform it as to the date and place which it may choose for the signing of the treaty.

I avail [etc.]

HYMANS

Document 31

Note of Poland, July 17, 1928

*The Polish Vice Minister for Foreign Affairs (Wysocki) to
the American Minister (Stetson)*

[Translation]

WARSAW, July 17, 1928.

MR. MINISTER: I have the honor to acknowledge the receipt of the note No. 1175 of June 23 last which you were good enough to send me, to which was attached the draft of a multi-lateral pact against war, as proposed by his excellency, Mr. Kellogg.

The principles which Mr. Kellogg has emphasized in the draft above mentioned conforming entirely with the objectives that Poland never ceases to pursue in its foreign policy, I have the honor to communicate to you the fact that the Polish Government accepts the text of the above-stated pact and declares itself ready to affix its signature thereto.

As regards the interpretation of the pact in question which you have been good enough to give in your note of June 23 and which confirms the fact that the pact is destined to insure the consolidation of peaceful relations between states on the basis of the existing international obligations, the Polish Government takes note of the following statements:

- (1) That the pact does not affect in any way the right of legitimate defense inherent in each state;
- (2) That each state signatory to the pact which may endeavor to realize its national interests by means of war shall be deprived of the benefits of the said pact;
- (3) That no incompatibility exists between the stipulations of the pact against war and the obligations deriving from the Covenant of the League of Nations for states which are members of the latter. This statement results from the very fact that the pact proposed by Mr. Kellogg stipulates the renunciation of war as an instrument of national policy.

These precisions as well as the opportunity given to all states to adhere to the pact, are of a nature to assure to Poland the possibility of satisfying her international obligations.

The Polish Government permits itself to express the hope of

seeing the realization in the near future of this common work of peace and stabilization destined to assure its benefits to all mankind.

Please accept [etc.]

WYSOCKI

Document 32

British Note, July 18, 1928

The British Secretary of State for Foreign Affairs (Chamberlain) to the American Chargé (Atherton)

LONDON, July 18, 1928.

SIR: I am happy to be able to inform you that after carefully studying the note which you left with me on the 23d June, transmitting the revised text of the draft of the proposed treaty for the renunciation of war, His Majesty's Government in Great Britain accept the proposed treaty in the form transmitted by you and will be glad to sign it at such time and place as may be indicated for the purpose by the Government of the United States.

My Government have read with interest the explanations contained in your note as to the meaning of the draft treaty, and also the comments which it contains upon the considerations advanced by other powers in the previous diplomatic correspondence.

You will remember that in my previous communication of the 19th May I explained how important it was to my Government that the principle should be recognised that if one of the parties to this proposed treaty resorted to war in violation of its terms, the other parties should be released automatically from their obligations towards that party under the treaty. I also pointed out that respect for the obligations arising out of the Covenant of the League of Nations and of the Locarno treaties was the foundation of the policy of the government of this country, and that they could not agree to any new treaty which would weaken or undermine these engagements.

The stipulation now inserted in the preamble under which any signatory power hereafter seeking to promote its national interests by resort to war against another signatory is to be denied the benefits furnished by the treaty is satisfactory to my Government, and is sufficient to meet the first point mentioned in the preceding paragraph.

His Majesty's Government in Great Britain do not consider, after mature reflection, that the fulfillment of the obligations which they have undertaken in the Covenant of the League of Nations and in the Treaty of Locarno is precluded by their acceptance of the proposed Treaty. They concur in the view

enunciated by the German Government in their note of the 27th April that these obligations do not contain anything which could conflict with the treaty proposed by the United States Government.

My Government have noted with peculiar satisfaction that all the parties to the Locarno treaty are now invited to become original signatories of the new treaty, and that it is clearly the wish of the United States Government that all members of the League should become parties either by signature or accession. In order that as many states as possible may participate in the new movement, I trust that a general invitation will be extended to them to do so.

As regards the passage in my note of the 19th May relating to certain regions of which the welfare and integrity constitute a special and vital interest for our peace and safety, I need only repeat that His Majesty's Government in Great Britain accept the new treaty upon the understanding that it does not prejudice their freedom of action in this respect.

I am entirely in accord with the views expressed by Mr. Kellogg in his speech of the 28th April that the proposed treaty does not restrict or impair in any way the right of self-defence, as also with his opinion that each state alone is competent to decide when circumstances necessitate recourse to war for that purpose.

In the light of the foregoing explanations, His Majesty's Government in Great Britain are glad to join with the United States and with all other governments similarly disposed in signing a definitive treaty for the renunciation of war in the form transmitted in your note of the 23d June. They rejoice to be associated with the Government of the United States of America and the other parties to the proposed treaty in a further and signal advance in the outlawry of war.

I have [etc.]

AUSTEN CHAMBERLAIN

Document 33

Note of Australia, July 18, 1928

The British Secretary of State for Foreign Affairs (Chamberlain), on behalf of the Commonwealth of Australia, to the American Chargé (Atherton)

LONDON, July 18, 1928.

Sir: In the note which you were so good as to address to me on June 23 last you stated that the Government of the United States would be glad to be informed whether His Majesty's Government in the Commonwealth of Australia were willing to join with the United States and other similarly disposed governments in signing a definitive treaty for the renunciation of war in the form of the draft treaty enclosed in your note.

2. I now beg leave to inform you that His Majesty's Government in the Commonwealth of Australia have given the most careful consideration to your note above mentioned and to the revised draft treaty which accompanied it, and that they accept the assurance given by the United States Secretary of State that the right of self-defence of a signatory state will not be impaired in any way by acceptance of the proposed treaty.

3. The Commonwealth Government have further observed that it is stated in your note of June 23 that the preamble to the revised treaty accords expressed recognition to the principle that if one signatory state resorts to war in violation of the treaty, the other signatory states will be released from their obligations under the treaty to that state. They accept this declaration that the preamble in this respect is to be taken as a part of the substantive provisions of the treaty itself.

4. They have also particularly examined the draft treaty from the point of view of its relationship to the Covenant of the League of Nations, and in this connection have come to the conclusion that it is not inconsistent with the latter instrument.

5. His Majesty's Government in the Commonwealth of Australia add that the foregoing are the only questions to which the proposed treaty gives rise in which they are especially interested. As the text of the treaty which has now been submitted is completely satisfactory to them so far as these

specific points are concerned, they will be quite agreeable to signing it in its present form.

I have [etc.]

AUSTEN CHAMBERLAIN

Document 34

Note of South Africa, July 18, 1928

The British Secretary of State for Foreign Affairs (Chamberlain), on behalf of the Union of South Africa, to the American Chargé (Atherton)

LONDON, July 18, 1928.

SIR: In the note which you were so good as to address to me on June 23 last you stated that the Government of the United States would be glad to be informed whether His Majesty's Government in the Union of South Africa were willing to join with the United States and other similarly disposed governments in signing a definitive treaty for the renunciation of war in the form of the draft treaty enclosed in your note.

2. I now beg leave to inform you that the following message has been received by telegraph from General Hertzog, Minister of External Affairs of the Union of South Africa, for communication to you:

On behalf of His Majesty's Government in the Union of South Africa I have the honour to inform you that my Government have given their most serious consideration to the new draft treaty for the renunciation of war, submitted in your note of 23d June, and to the observations accompanying it.

My Government note with great satisfaction (a) that it is common cause that the right of legitimate self-defence is not affected by the terms of the new draft; (b) that, according to the preamble, any signatory who shall seek to promote its national interests by resort to war shall forfeit the benefits of the treaty; and, (c) that the treaty is open to accession by all powers of the world.

My Government have further examined the question whether the provisions of the present draft are inconsistent with the terms of the Covenant of the League of Nations by which they are bound, and have come to the conclusion that this is not the case, and that the objects which the League of Nations was constituted to serve can but be promoted by members of the League of Nations participating in the proposed treaty.

His Majesty's Government in the Union of South Africa have therefore very great pleasure in expressing their willing-

ness to sign, together with all other powers which might be similarly inclined, the treaty in the form proposed in your note under reference.

I have [etc.]

AUSTEN CHAMBERLAIN

Document 35

Note of New Zealand, July 18, 1928

The British Secretary of State for Foreign Affairs (Chamberlain), on behalf of the Government of New Zealand, to the American Chargé (Atherton)

LONDON, July 18, 1928.

SIR: In the note which you were so good as to address to me on June 23 last you stated that the Government of the United States would be glad to be informed whether His Majesty's Government in New Zealand were willing to join with the United States and other similarly disposed governments in signing a definitive treaty for the renunciation of war in the form of the draft treaty enclosed in your note.

2. I now beg leave to inform you that His Majesty's Government in New Zealand desire to associate themselves with the terms of the note which I have had the honour to address to you today notifying you of the willingness of His Majesty's Government in Great Britain to sign a multilateral treaty for the renunciation of war as proposed by the Government of the United States. His Majesty's Government in New Zealand desire me to add that they will have the utmost satisfaction, in cooperation with His Majesty's governments in other parts of the British Empire, in joining with the Government of the United States and with all other governments similarly disposed in signing a treaty in the form proposed.

I have [etc.]

AUSTEN CHAMBERLAIN

Document 36

Note of India, July 18, 1928

The British Secretary of State for Foreign Affairs (Chamberlain), on behalf of the Government of India, to the American Chargé (Atherton)

LONDON, July 18, 1928.

SIR: In the note which you were so good as to address to me on June 23 last you stated that the Government of the United States would be glad to be informed whether the Government of India were willing to join with the United States and other similarly disposed governments in signing a definitive treaty for the renunciation of war in the form of the draft treaty enclosed in your note.

2. I now beg leave to inform you that the Government of India associate themselves whole-heartedly and most gladly with the terms of the note which I have had the honour to address to you today notifying you of the willingness of His Majesty's Government in Great Britain to sign a multilateral treaty for the renunciation of war as proposed by the Government of the United States.

I have [etc.]

AUSTEN CHAMBERLAIN

Document 37

Note of Czechoslovakia, July 20, 1928

*The Czechoslovakian Minister of Foreign Affairs (Benš) to
the American Minister (Einstein)*

[Translation]

LONDON, July 18, 1928.

MR. MINISTER: I have had the honor of receiving your excellency's letter of June 23 by which the Government of the United States invites the Government of the Czechoslovak Republic to sign the proposed treaty for the renunciation of war. The same invitation was transmitted to our representative in Washington. The letter contains in addition to the integral text of the proposed treaty a commentary on the text which explains the remarks of the French Government and indicates in detail the meaning and the significance which the Government of the United States attaches to the multilateral treaty in the event of the treaty's signature, ratification, and enactment.

I have the honor to transmit to your excellency by this note the reply of the Czechoslovak Government.

1. First, I would very respectfully thank the Government of the United States for having addressed its invitation to us. From the beginning we have followed the negotiations between the French and American Governments on the subject of the pact for the renunciation of war with the greatest sympathy and attention, and were ready at any moment to associate ourselves with this noble undertaking, which marks a memorable date in the history of the world after the war. In our negotiations which I have had the honor, during the last few months, to carry on with the representatives of the United States, France, and Great Britain, I have several times emphasized the importance of this act and the political necessity of associating thereto the other powers also and especially those who have assumed obligations by their negotiations at Locarno in 1925. The Government of the United States, agreeing fully in this with the other powers, has been good enough to recognize the justice of this point of view and addressed to us its invitation. The Czechoslovak Government attributes thereto a considerable political importance and warmly thanks the Washington Government.

2. In accordance with the negotiations prior to the signing of the treaty, as well as by the changes made in the preamble from the original text, and from the explanations contained in your excellency's letter of June 23, 1928, it is clear that there is nothing in this treaty in opposition either to the provisions of the Covenant of the League of Nations, or to those of the Locarno treaties or the neutrality treaties, or, in general, to the obligations contained in existing treaties which the Czechoslovak Republic has hitherto made.

3. From the explanations given in your excellency's letter it is further brought out that any violation of the multilateral treaty by one of the contracting parties would free entirely the other signatory powers from their obligations towards the power which might have violated the stipulations of this treaty. It is furthermore apparent that the right of self-defense is in no way weakened or restricted by the obligations of the new treaty and that each power is entirely free to defend itself according to its will and its necessities against attack and foreign invasion.

4. As thus defined both in the text of the preamble and in the statements of your excellency's letter, the goal of the new treaty, according to the opinion of the Czechoslovak Republic, is to consolidate and maintain peaceful relations, and peaceful and friendly collaboration under the contractual terms in which these have today been established between the interested nations. By their signature, the contracting parties will renounce war as an instrument of their national policy aimed to satisfy their selfish interests. This would be an immense benefit for humanity; and the Government of the Czechoslovak Republic rejoices to see that the American Government is ready to offer participation in this treaty, on the one hand to the powers who are parties to the neutrality treaties and on the other to all other powers in order to invest it with as universal a character as possible.

5. The Government of the Czechoslovak Republic having noted everything contained in your excellency's note expresses its point of view on this subject as shown in the foregoing, thus confirming the explanations of your note of June 23, 1928. It is very happy to be able to reply in the affirmative to the invitation of the Washington Government and thanking it again and most particularly for its generous efforts towards consolidating and maintaining world peace, declares that it is now ready to

sign the text of the multilateral treaty in accordance with the proposition of his excellency Mr. Kellogg, as set forth in your excellency's letter of June 23, 1928.

I venture to add that the Government of the Czechoslovak Republic gladly associates itself with all those who have rendered warm homage to the noble manifestation for world peace made by the Government of the United States and that the foreign policy of our country sees therein the realization of the ends which it has pursued for ten years.

Pray accept [etc.]

EDUARD BENĚŠ

Document 38

Japanese Note, July 20, 1928

The Japanese Minister for Foreign Affairs (Tanaka) to the American Chargé (Neville)

Tokyo, July 20, 1928.

SIR: I have the honor to acknowledge the receipt of your note of the 23d ultimo in which you recall to my attention your Government's identic note of the 13th of April of this year, enclosing, together with certain correspondence, the preliminary draft of a treaty, and inquiring whether this Government were in a position to give favorable consideration to the latter. Your note under reply further recalls that on the 20th of April the Government of the French Republic circulated among the interested governments an alternative draft treaty, and that on the 28th of April the Secretary of State of the United States of America explained fully the construction placed by that Government on their own draft, in view of the matter emphasized in the French alternative.

You now further inform me that the British, German, and Italian Governments have replied to your Government's notes of the 13th April last, and that the Governments of the British self-governing dominions and of India have likewise replied to invitations addressed to them on the suggestion of His Britannic Majesty's Government in Great Britain; and you observe that none of these Governments has expressed any dissent from the construction above referred to, or any disapproval of the principle underlying the proposals, nor have they suggested any specific modifications of the text of the draft; and you proceed to reenforce in detail the explanations made by the Secretary of State in his speech of the 28th April.

You then transmit for the consideration of this Government the revised draft of a multilateral treaty, which takes in the British self-governing dominions, India, and all parties to the Locarno treaty, as original parties, and in the preamble of which is included a statement which is directed to recognizing the principle that if a state goes to war in violation of the treaty, the other contracting powers are released from their obligations under the treaty to that state.

Such a multilateral treaty as so revised, you are instructed to state your government are ready to sign at once, and you

express the fervent hope that this Government will be able promptly to indicate their readiness to accept it in this form without qualification or reservation. You conclude by expressing the desire of the Government of the United States to know whether my Government are prepared to join with the United States and other similarly disposed governments in signing a definitive treaty in the form so transmitted.

In reply, I have the honor to inform you that the Japanese Government are happy to be able to give their full concurrence to the alterations now proposed, their understanding of the original draft submitted to them in April last being, as I intimated in my note to his excellency, Mr. McVeagh, dated the 26th of May 1928, substantially the same as that entertained by the Government of the United States. They are therefore ready to have produced instructions for the signature, on that footing, of the treaty in the form in which it is now proposed.

I can not conclude without congratulating your Government most warmly upon the rapid and general acceptance which their proposals have met with. The Imperial Government are proud to be among the first to be associated with a movement so plainly in unison with the hopes everywhere entertained, and confidently concur with the high probability of the acceptance of this simple and magnanimous treaty by the whole civilized world.

I beg [etc.]

BARON GIICHI TANAKA

The Treaty of August 27, 1928

LE PRÉSIDENT DU REICH ALLEMAND, LE PRÉSIDENT DES ÉTATS-UNIS D'AMÉRIQUE, SA MAJESTÉ LE ROI DES BELGES, LE PRÉSIDENT DE LA RÉPUBLIQUE FRANÇAISE, SA MAJESTÉ LE ROI DE GRANDE-BRETAGNE, D'IRLANDE ET DES TERRITOIRES BRITANNIQUES AU DELÀ DES MERS, EMPEREUR DES INDES, SA MAJESTÉ LE ROI D'ITALIE, SA MAJESTÉ L'EMPEREUR DU JAPON, LE PRÉSIDENT DE LA RÉPUBLIQUE DE POLOGNE, LE PRÉSIDENT DE LA RÉPUBLIQUE TCHÉCOSLOVAQUE,

Ayant le sentiment profond du devoir solennel qui leur incombe de développer le bien-être de l'humanité;

Persuadés que le moment est venu de procéder à une franche renonciation à la guerre comme instrument de politique nationale afin que les relations pacifiques et amicales existant actuellement entre leurs peuples puissent être perpétuées;

Convaincus que tous changements dans leurs relations mutuelles ne doivent être recherchés que par des procédés pacifiques et être réalisés dans l'ordre et dans la paix, et que toute Puissance signataire qui chercherait désormais à développer ses intérêts nationaux en recourant à la guerre devra être privée du bénéfice du présent Traité;

Espérant que, encouragées par leur exemple, toutes les autres nations du monde se joindront à ces efforts humanitaires et, en adhérant au présent Traité dès qu'il entrera en vigueur, mettront leurs peuples à même de profiter de ses bienfaites stipulations, unissant ainsi les nations civilisées du monde dans une renonciation commune à la guerre comme instrument de leur politique nationale;

Ont décidé de conclure un Traité et à cette fin ont désigné comme leurs Plénipotentiaires respectifs, savoir:

LE PRÉSIDENT DU REICH ALLEMAND:

M. le Docteur Gustav STRESEMANN, Ministre des Affaires Étrangères;

LE PRÉSIDENT DES ÉTATS-UNIS D'AMÉRIQUE:

L'Honorable Frank B. KELLOGG, Secrétaire d'État;

Document 39

The Treaty of August 27, 1928

THE PRESIDENT OF THE GERMAN REICH, THE PRESIDENT OF THE UNITED STATES OF AMERICA, HIS MAJESTY THE KING OF THE BELGIANS, THE PRESIDENT OF THE FRENCH REPUBLIC, HIS MAJESTY THE KING OF GREAT BRITAIN, IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA, HIS MAJESTY THE KING OF ITALY, HIS MAJESTY THE EMPEROR OF JAPAN, THE PRESIDENT OF THE REPUBLIC OF POLAND, THE PRESIDENT OF THE CZECHOSLOVAK REPUBLIC,

Deeply sensible of their solemn duty to promote the welfare of mankind;

Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated;

Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory Power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this Treaty;

Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavor and by adhering to the present Treaty as soon as it comes into force bring their peoples within the scope of its beneficent provisions, thus uniting the civilized nations of the world in a common renunciation of war as an instrument of their national policy;

Have decided to conclude a Treaty and for that purpose have appointed as their respective Plenipotentiaries:

THE PRESIDENT OF THE GERMAN REICH:

Dr. Gustav STRESEMANN, Minister for Foreign Affairs

THE PRESIDENT OF THE UNITED STATES OF AMERICA:

The Honorable Frank B. KELLOGG, Secretary of State;

SA MAJESTÉ LE ROI DES BELGES:

M. Paul HYMANS, Ministre des Affaires Étrangères, Ministre d'État;

LE PRÉSIDENT DE LA RÉPUBLIQUE FRANÇAISE:

M. Aristide BRIAND, Ministre des Affaires Étrangères;

SA MAJESTÉ LE ROI DE GRANDE-BRETAGNE, D'IRLANDE ET DES TERRITOIRES BRITANNIQUES AU DELÀ DES MERS, EMPEREUR DES INDES:

Pour la GRANDE-BRETAGNE et l'IRLANDE DU NORD et toutes les Parties de l'Empire Britannique qui ne sont pas individuellement Membres de la Société des Nations:

Le Très Honorable Lord CUSHENDUN, Chancelier du Duché de Lancastre, Secrétaire d'État pour les Affaires Étrangères *par intérim*;

Pour le DOMINION DU CANADA:

Le Très Honorable William Lyon MACKENZIE KING, Premier Ministre et Ministre des Affaires Extérieures;

Pour le COMMONWEALTH D'AUSTRALIE:

L'Honorable Alexander John McLACHLAN, Membre du Conseil Exécutif Fédéral;

Pour le DOMINION DE NOUVELLE-ZÉLANDE:

L'Honorable Sir Christopher James PARR, Haut-Commissaire de la Nouvelle-Zélande en Grande-Bretagne;

Pour l'UNION DE L'AFRIQUE DU SUD:

L'Honorable Jacobus Stephanus SMIT, Haut-Commissaire de l'Union de l'Afrique du Sud en Grande-Bretagne;

Pour l'ÉTAT LIBRE D'IRLANDE:

M. William Thomas COSGRAVE, Président du Conseil Exécutif;

Pour l'INDE:

Le Très Honorable Lord CUSHENDUN, Chancelier du Duché de Lancastre, Secrétaire d'État pour les Affaires Étrangères *par intérim*;

HIS MAJESTY THE KING OF THE BELGIANS:

Mr. Paul HYMANS, Minister for Foreign Affairs, Minister of State;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr. Aristide BRIAND, Minister for Foreign Affairs;

HIS MAJESTY THE KING OF GREAT BRITAIN, IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA.

For GREAT BRITAIN and NORTHERN IRELAND and all parts of the British Empire which are not separate Members of the League of Nations:

The Right Honourable Lord CUSHENDUN, Chancellor of the Duchy of Lancaster, Acting Secretary of State for Foreign Affairs;

For the DOMINION OF CANADA:

The Right Honourable William Lyon MACKENZIE KING, Prime Minister and Minister for External Affairs;

For the COMMONWEALTH OF AUSTRALIA:

The Honorable Alexander John McLACHLAN, Member of the Executive Federal Council;

For the DOMINION OF NEW ZEALAND:

The Honourable Sir Christopher James PARR, High Commissioner for New Zealand in Great Britain;

For the UNION OF SOUTH AFRICA:

The Honourable Jacobus Stephanus SMIT, High Commissioner for the Union of South Africa in Great Britain;

For the IRISH FREE STATE:

Mr. William Thomas COSGRAVE, President of the Executive Council;

For INDIA:

The Right Honourable Lord CUSHENDUN, Chancellor of the Duchy of Lancaster, Acting Secretary of State for Foreign Affairs;

SA MAJESTÉ LE ROI D'ITALIE:

Le Comte Gaetano MANZONI, Son Ambassadeur Extraordinaire et Plénipotentiaire à Paris;

SA MAJESTÉ L'EMPEREUR DU JAPON:

Le Comte UCHIDA, Conseiller Privé;

LE PRÉSIDENT DE LA RÉPUBLIQUE DE POLOGNE:

M. A. ZALESKI, Ministre des Affaires Étrangères;

LE PRÉSIDENT DE LA RÉPUBLIQUE TCHÉCOSLOVAQUE:

M. le Docteur Eduard BENÈS, Ministre des Affaires Étrangères;

qui, après s'être communiqué leurs pleins pouvoirs, reconnus en bonne et due forme, sont tombés d'accord sur les articles suivants :

ARTICLE I.

Les Hautes Parties Contractantes déclarent solennellement au nom de leurs peuples respectifs qu'elles condamnent le recours à la guerre pour le règlement des différends internationaux, et y renoncent en tant qu'instrument de politique nationale dans leurs relations mutuelles.

ARTICLE II.

Les Hautes Parties Contractantes reconnaissent que le règlement ou la solution de tous les différends ou conflits, de quelque nature ou de quelque origine qu'ils puissent être, qui pourront surgir entre elles, ne devra jamais être recherché que par des moyens pacifiques.

ARTICLE III.

Le présent Traité sera ratifié par les Hautes Parties Contractantes désignées dans le préambule, conformément aux exigences de leurs constitutions respectives, et il prendra effet entre elles dès que tous les instruments de ratification auront été déposés à Washington.

Le présent Traité, lorsqu'il aura été mis en vigueur ainsi qu'il est prévu au paragraphe précédent, restera ouvert aussi longtemps qu'il sera nécessaire pour l'adhésion de toutes

HIS MAJESTY THE KING OF ITALY:

Count Gaetano MANZONI, his Ambassador Extraordinary and Plenipotentiary at Paris.

HIS MAJESTY THE EMPEROR OF JAPAN.

Count UCHIDA, Privy Councillor;

THE PRESIDENT OF THE REPUBLIC OF POLAND:

Mr. A. ZALESKI, Minister for Foreign Affairs;

THE PRESIDENT OF THE CZECHOSLOVAK REPUBLIC.

Dr. Eduard BENÈS, Minister for Foreign Affairs;

who, having communicated to one another their full powers found in good and due form have agreed upon the following articles:

ARTICLE I.

The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

ARTICLE II.

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

ARTICLE III.

The present Treaty shall be ratified by the High Contracting Parties named in the Preamble in accordance with their respective constitutional requirements, and shall take effect as between them as soon as all their several instruments of ratification shall have been deposited at Washington.

This Treaty shall, when it has come into effect as prescribed in the preceding paragraph, remain open as long as may be necessary for adherence by all the other Powers

les autres Puissances du monde. Chaque instrument établissant l'adhésion d'une Puissance sera déposé à Washington et le Traité, immédiatement après ce dépôt, entrera en vigueur entre la Puissance donnant ainsi son adhésion et les autres Puissances contractantes.

Il appartiendra au Gouvernement des États-Unis de fournir à chaque Gouvernement désigné dans le préambule et à tout Gouvernement qui adhéra ultérieurement au présent Traité une copie certifiée conforme dudit Traité et de chacun des instruments de ratification ou d'adhésion. Il appartiendra également au Gouvernement des États-Unis de notifier télégraphiquement auxdits Gouvernements chaque instrument de ratification ou d'adhésion immédiatement après dépôt.

EN FOI DE QUOI, les Plénipotentiaires respectifs ont signé le présent Traité établi en langue française et en langue anglaise, les deux textes ayant force égale, et y ont apposé leurs cachets.

FAIT à Paris, le vingt-sept Août mil neuf cent vingt-huit.

of the world. Every instrument evidencing the adherence of a Power shall be deposited at Washington and the Treaty shall immediately upon such deposit become effective as between the Power thus adhering and the other Powers parties hereto.

It shall be the duty of the Government of the United States to furnish each Government named in the Preamble and every Government subsequently adhering to this Treaty with a certified copy of the Treaty and of every instrument of ratification or adherence. It shall also be the duty of the Government of the United States telegraphically to notify such Governments immediately upon the deposit with it of each instrument of ratification or adherence.

IN FAITH WHEREOF the respective Plenipotentiaries have signed this Treaty in the French and English languages both texts having equal force, and hereto affix their seals.

DONE at Paris, the twenty-seventh day of August in the year one thousand nine hundred and twenty-eight.

[SEAL]	GUSTAV STRESEMAN
[SEAL]	FRANK B. KELLOGG
[SEAL]	PAUL HYMANS
[SEAL]	ARI BRIAND
[SEAL]	CUSHENDUN
[SEAL]	W. L. MACKENZIE KING
[SEAL]	A. J. McLACHLAN
[SEAL]	C. J. PARR
[SEAL]	J. S. SMIT
[SEAL]	LIAM T. MACCOSGAIR
[SEAL]	CUSHENDUN
[SEAL]	G. MANZONI
[SEAL]	UCHIDA
[SEAL]	AUGUST ZALESKI
[SEAL]	DR. EDUARD BENES

Document 40

Address of M. Briand, August 27, 1928

[Translation; from *The New York Times*, August 28, 1928]

Gentlemen, I am fully conscious that silence would best befit such a solemn occasion. What I should like without any further words would be to let each of you simply rise from his seat to go and affix his signature in the name of his own country to the greatest collective deed born of peace. But I should be failing in my duty to my country if I did not tell you how deeply it feels the honor of welcoming the first signatories of a general pact for the renunciation of war.

If this honor has been left to France as acknowledgment of the moral standing she enjoys, thanks to her constant effort in the cause of peace, I gladly accept such tribute on behalf of the Government of the French Republic, and I express the gratification of the whole people, happy that the inmost recesses of their national psychology should at last be understood by the world.

While extending to you gentlemen a cordial welcome let me rejoice at seeing gathered here, save those who were unavoidably prevented from coming by their state of health or by other duties, all the statesmen who, in their capacity as Ministers of Foreign Affairs, have taken a personal share in the conception, preparation and drafting of the new pact.

We owe special thanks to those who have undergone the fatigue of a long journey in order to be present at this manifestation.

I have no doubt that you are all ready to join with me in the same cordial impulse to one of our colleagues who did not hesitate to come himself and assert with the full moral authority attached to his name and the great country which he represents the affirmation of his steady faith in the importance and scope of the deed which we are about to sign.

Seated today among us in this same hall where his illustrious forerunner, President Wilson, associated already with works of peace, and with so high a consciousness of the rule of his country, the honorable Mr. Kellogg is able to measure with just pride all the road covered in so short a time since the epoch when we examined, both of us, the possibilities of realization of this vast diplomatic enterprise.

None is better qualified to take part in the negotiations today

brought to a happy ending, a preponderant part of which was his and which will always stand to his honor in the minds of men. His optimism and his tenacity have overcome human skepticism. His loyalty and his good faith, the goodwill which he brought to dissipate by clear and precise explanations, legitimate misgivings, have won for him the confidence of all his collaborators; his clear-sightedness has shown him what one can expect from Governments inspired by the deep yearnings of nations.

What greater lesson can be offered the world than the spectacle of a reunion where for the signature of a pact against war, Germany of her own free will and on an even footing takes her place among the other signatories, her former adversaries.

The occasion is all the more striking when it is given to a representative of France to receive for the first time since more than half a century a German Foreign Minister on French soil and give him the same welcome as all his foreign colleagues. I would add, gentlemen, when this representative of Germany is named Stresemann, one can believe me particularly happy to render homage to the highness of mind and to the courage of this eminent man of State who during more than three years has not hesitated to assume full responsibility in the work of European cooperation for the maintenance of peace.

Since I have gone so far as to mention names, you will not take it amiss, and certainly Lord Cushendun will approve me, if I personally evoke among us with brotherly feeling the name of Sir Austen Chamberlain. Allow me to address to him all our wishes for a speedy and full return to health. When I think of the unwearying devotion that the cause of peace has always fostered in his noble soul, I cannot help imagining the joy which so determined an enemy of war would have felt at the sight of a meeting such as this. As to ourselves, we must preforce believe that he is still with us whether invisible or in the flesh at any manifestation of peace.

It will be, I hope, no exaggeration to say that today's event marks a new date in history-making.

For the first time, on general plans accessible to all nations in the universe, a congress of peace does something else than settle politically the immediate conditions of a particular peace such as they are imposed in fact by the results of war. For

the first time, on a comprehensive and absolute scale, a treaty is truly devoted to the very establishment of peace initiating a new law and freed from all political contingencies. Such a treaty is a beginning and not an end unto itself.

Nor have we met to liquidate a war. The Pact of Paris, born of peace and drawn from a free juridical motion, can and must be a regular treaty of concord. That is, no doubt, why Mr. Kellogg, when he insisted on leaving to the French Government the privilege of receiving you in Paris, was so kind as to tell the French Ambassador that it seemed to him quite fitting that the neighborhood of the Place de la Concorde should be chosen for signing the pact.

The treaties of Locarno, after the Dawes plan, had already borne witness to this new spirit that now finds its full vent. All their signatories were quite familiar with the idea of the renunciation of war as an instrument of national policy, as I had the occasion of saying in my message to the American people on the 6th of April, 1927. But those practical agreements, calculated to create a political guarantee of peace in a definite section of Europe, could not, because of their very nature, assume that universal character from which a general pact against war derives all its value.

The League of Nations, deeply imbued with the same spirit, had likewise issued a declaration tending in fact to obtain eventually the same result as the new pact; but apart from the fact that the United States had no share in it, the formula and methods of the League could not be the same as those to which it has been possible for us to have recourse for such a general and absolute agreement as the pact provides. The League of Nations, a vast political undertaking of insurance against war and a powerful institution of organized peace where there is room to welcome all fresh contributions to the common work, cannot but rejoice at the signing of an international contract whereby it is to benefit.

Far from being inconsistent with any of its obligations, this new act on the contrary offers it a kind of general reinsurance. Thus, those of her members who will soon be able to ask the League to register today's contract will rightly feel that they are bringing her a precious token of their attachment and loyalty.

It may now be appropriate to explain what is finally the essential feature of this pact against war. It is this:

For the first time in the face of the whole world through a solemn covenant involving the honor of great nations, all of which have behind them a heavy past of political conflict, war is renounced unreservedly as an instrument of national policy; that is to say, in its most specific and dreaded form—selfish and wilful war. Considered of yore as of divine right and having remained in international ethics as an attribute of sovereignty, that form of war becomes at last juridically devoid of what constituted its most serious danger—its legitimacy.

Henceforth, branded with illegality, it is by mutual accord truly and regularly outlawed so that a culprit would incur the unconditional condemnation and probably the enmity of all its co-signatories. It is a direct blow to the institution of war, even to its very vitals.

It is no longer a question of a defensive organization against this scourge, but of attacking the evil at the root itself. Thus shall war as a means of arbitrary and selfish action no longer be deemed lawful. Thus its thread shall no longer hang over the economic, political and social life of peoples. Thus shall the smaller nations henceforth enjoy real independence in international discussions.

Freed from the old bondage, the nations that have signed the new contract will gradually forsake the habit of associating the idea of national prestige and national interests with the idea of force, and this single psychological fact will not be the least important factor in the evolution that is needed to lead to the regular stabilization of peace.

Oh! But this is not realism, it has been said, and are not sanctions lacking? It might be asked whether true realism consists in excluding from the realm of facts the moral forces, among which is that of public opinion. In effect, a state which would act so as to incur the reprobation of all its partners would run the positive risk of seeing all of them gradually and freely gather against it with redoubtable consequences that would not be long in ensuing. And where is the country, signatory to this pact, whose leaders would on their own responsibility expose it to such danger?

The modern law of interdependence between nations makes it incumbent upon every statesman to take up for himself those memorable words of President Coolidge: "An act of war in any part of the world is an act that injures the interests of my country."

Now we can realize how important it is to extend the scope of this wide range of international solidarity which tends, as an ideal end, to encompass the whole of the universe.

When, on the 20th of June, 1927, I had the honor of proposing to the Hon. Mr. Kellogg the form of words which he decided to accept and embody in the draft of a multilateral pact, I never contemplated for one moment that the suggested engagement should only exist between France and the United States. Indeed I have always thought that in one way or another through multiplication or extension, the proposed covenant would in itself possess an expanding force strong enough to reach rapidly all nations whose moral adhesion was indispensable.

It was, therefore, a source of gratification to me to see Mr. Kellogg from the beginning of the active negotiations that he was to lead with such a clear-sighted and persevering mind, advocate extension of the pact and assign to it that universal character that fully answered the wishes of the French Government.

It may be said that this desirable universality that was at the origin of the pact has already found its application in actual practice, for the intentions expressed by many Governments enable us even now to consider the spiritual community of the nations that are morally represented at this first signature as being much wider than it appears to the onlookers. All those peoples whose delegates have not been in a position to sit among us today must realize in this hour of complete union our unanimous regret that for purely technical reasons it was found imperative to adopt a procedure best calculated to ensure and expedite, for the benefit of all, the success of this great undertaking.

Thus the mind's eye broadens this solemn assembly of first signatories to a general pact for renunciation of war and extends it beyond the walls of this room and even over all frontiers whether on land or on sea. With this wide communion of men which we feel surrounding us, we sincerely are entitled to reckon that we are more than fourteen around this table. And well may you have noticed that the Government of the republic has purposely ordered that the flags of all nations should be hoisted over the building which is sheltering us today.

Gentlemen, in a moment the awakening of a great hope will

be signaled to the world along the wires. It will henceforth behoove us as a sacred duty to do all that can and must be done for that hope not to be disappointed. Peace is proclaimed. That is well; that is much; but it still remains necessary to organize it. In the solution of difficulties right and not might must prevail. That is to be the work of tomorrow.

At this unforgettable hour the conscience of peoples, pure and rid of any national selfishness, is sincerely endeavoring to attain those serene regions where human brotherhood can be felt in the beatings of one and the same heart. Let us seek a common ideal within which we can all merge our fervent hopes and give up any selfish thoughts.

As there is not one of the nations represented here, but has shed the blood of her children on the battlefields of the last war, I propose that we should dedicate to the dead, to all the dead, of the Great War, the event which we are going to consecrate together by our signatures.

American Note to 48 Powers, August 27, 1928

Note of the United States addressed to Albania, Afghanistan, Argentina, Austria, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, Estonia, Ethiopia, Finland, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, Latvia, Liberia, Lithuania, Luxemburg, Mexico, Netherlands, Nicaragua, Norway, Panamá, Paraguay, Persia, Perú, Portugal, Rumania, Salvador, Kingdom of the Serbs, Croats and Slovenes, Siam, Spain, Sweden, Switzerland, Turkey, Uruguay, and Venezuela—August 27, 1928.

I have the honor to inform you that the Governments of Germany, the United States of America, Belgium, France, Great Britain, Canada, Australia, New Zealand, Union of South Africa, Irish Free State, India, Italy, Japan, Poland, and Czechoslovakia have this day signed in Paris a treaty binding them to renounce war as an instrument of national policy in their relations with one another and to seek only by pacific means the settlement or solution of all disputes which may arise among them.

This treaty, as Your Excellency is aware, is the outcome of negotiations which commenced on June 20, 1927, when M. Briand, Minister of Foreign Affairs of the French Republic submitted to my Government a draft of a pact of perpetual friendship between France and the United States. In the course of the subsequent negotiations this idea was extended so as to include as original signatories of the anti-war treaty not only France and the United States but also Japan, the British Empire and all the Governments which participated with France and Great Britain in the Locarno agreements, namely, Belgium, Czechoslovakia, Germany, Italy and Poland. This procedure met the point raised by the British Government in its note of May 19, 1928, where it stated that the treaty from its very nature was not one which concerned that Government alone, but was one in which that Government could not undertake to participate otherwise than jointly and simultaneously with the Governments in the Dominions and the Government of India; it also settled satisfactorily the question whether there was any inconsistency between the new treaty and the Treaty of Locarno, thus meeting the observations of the

French Government as to the necessity of extending the number of original signatories.

The decision to limit the original signatories to the powers named above, that is, to the United States, Japan, the parties to the Locarno treaties, the British Dominions and India, was based entirely upon practical considerations. It was the desire of the United States that the negotiations be successfully concluded at the earliest possible moment, and that the treaty become operative without the delay that would inevitably result were prior universal acceptance made a condition precedent to its coming into force. My Government felt, moreover, that if these powers could agree upon a simple renunciation of war as an instrument of national policy there could be no doubt that most, if not all, of the other powers of the world would find the formula equally acceptable and would hasten to lend their unqualified support to so impressive a movement for the perpetuation of peace. The United States has, however, been anxious from the beginning that no State should feel deprived of an opportunity to participate promptly in the new treaty and thus not only align itself formally and solemnly with this new manifestation of the popular demand for world peace but also avail itself of the identical benefits enjoyed by the original signatories. Accordingly in the draft treaty proposed by it the United States made specific provision for participation in the treaty by any and every power desiring to identify itself therewith, and this same provision is found in the definitive instrument signed today in Paris. It will also be observed that the powers signing the treaty have recorded in the preamble their hope that every nation of the world will participate in the treaty, and in that connection I am happy to be able to say that my Government has already received from several Governments informal indications that they are prepared to do so at the earliest possible moment. This convincing evidence of the world-wide interest and sympathy which the new treaty has evoked is most gratifying to all the Governments concerned.

In these circumstances I have the honor formally to communicate to Your Excellency for your consideration and for the approval of your Government, if it concurs therein, the text of the above-mentioned treaty as signed today in Paris, omitting only that part of the preamble, which names the several plenipotentiaries. The text is as follows:

[Here follows the text of the treaty.]

The provisions regarding ratification and adherence are, as Your Excellency will observe, found in the third and last article. That article provides that the treaty shall take effect as soon as the ratifications of all the powers named in the preamble shall have been deposited in Washington, and that it shall be open to adherence by all the other powers of the world, instruments evidencing such adherence to be deposited in Washington also. Any power desiring to participate in the treaty may thus exercise the right to adhere thereto and my Government will be happy to receive at any time appropriate notices of adherence from those Governments wishing to contribute to the success of this new movement for world peace by bringing their peoples within its beneficent scope. It will be noted in this connection that the treaty expressly provides that when it has once come into force it shall take effect immediately between an adhering power and the other parties thereto, and it is therefore clear that any Government adhering promptly will fully share in the benefits of the treaty at the very moment it comes into effect.

I shall shortly transmit for Your Excellency's convenient reference a printed pamphlet containing the text in translation of M. Briand's original proposal to my Government of June 20, 1927, and the complete record of the subsequent diplomatic correspondence on the subject of a multilateral treaty for the renunciation of war. I shall also transmit, as soon as received from my Government, a certified copy of the signed treaty.

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Document 42

Russian Note, August 31, 1928

The Commissar for Foreign Affairs of the Union of the Soviet Socialist Republics (Litvinoff) to the French Ambassador at Moscow (Herbette)

[Translation]

Mr. Ambassador:

On August 27 you were so kind as to bring officially to my knowledge under instructions from your Government the fact that on that very day the Governments of the German Republic, the United States of North America, Belgium, France, Great Britain and its dominions, Italy, Japan, Poland and Czechoslovakia had signed in Paris a multilateral covenant under which they undertake not to resort in their mutual relations to war as an instrument of national policy, but to solve the differences which might arise among them by exclusively pacific means. When you handed me a copy of the said covenant and gave me a brief statement of its history you were also so kind, Mr. Ambassador, as to say to me.

(a) that the limitation of the number of the original signatories of the covenant was solely prompted, according to the Government of the United States of North America, by purely practical considerations and with the purpose of making it easier actually to put in force the covenant in the shortest time possible, but that it was always kept in mind that as soon as the covenant should be finally brought into being the immediate accession of all the nations in the world would be guaranteed on the same conditions and with the same advantages as those that were given to the original signatories of the covenant;

(b) that in accordance with the foregoing the Government of the United States of North America was charged with the duty of accepting the declarations of all the States that should wish to adhere to the covenant;

(c) that the representatives of the Government of the United States of North America in all the foreign States, with the exception of those whose representatives had already signed the covenant, had been instructed to communicate to the governments to which they are accredited the text of the covenant signed in Paris;

(d) that the Government of the United States of North

America declared its readiness to receive even now the instruments of adherence of those governments;

(e) that the Government of the French Republic accepted the duty of making known to the Government of the U. R. S. S., through you, Mr. Ambassador, the text of the said covenant and to inquire whether it was willing to accede and

(f) that, if so, you, Mr. Ambassador, were authorized to receive the instrument of adhesion to the covenant for transmission to Washington.

In making the answer of the Government of the U. R. S. S. to your inquiry known through this note, I have the honor to beg you, Mr. Ambassador, to communicate the following to your Government with the request that it will kindly transmit it to the Government of the United States of North America.

1. The Soviet Government, which from the very beginning of its existence laid at the foundation of its foreign policy the safeguard and guarantee of general peace, has always been a consistent supporter of peace and has always met half way any action taken in that direction. The Soviet Government, furthermore, has always regarded, and still regards, as the one effective way of preventing armed conflict to make a reality of the program of general and total disarmament, as in the feverish atmosphere of general armament any rivalry between States unavoidably leads to war, and that war is all the more bloody as the system of armaments is more perfect. A detailed plan of complete disarmament has been submitted by the delegation of the Soviet Union to the Preparatory Commission of the Conference on Disarmament at the League of Nations, but unfortunately did not win the support of a majority of that Commission, including the representatives of those very Powers which are the original signatories of the covenant of Paris. The plan was rejected although its acceptance and enforcement would have meant a genuine guarantee of peace.

2. Unwilling to overlook any chance of contributing in lessening the burden of armament which is crushing the people, the Soviet Government, after the rejection of its motion for total disarmament, did not decline not only to discuss the partial rejection of armaments but intervened through its delegation in the Preparatory Commission with a detailed project of partial but substantial disarmament. Yet the Soviet Government unfortunately must note that the project also failed to find support in the Preparatory Commission which once more

so gave evidence of the total impotency of the League of Nations in the field of disarmament which, nevertheless, is the most substantial guarantee of peace and the most powerful means of abolishing war; this took place in the face of the obvious resistance offered to the Soviet propositions by nearly all the States which were the first to sign the covenant forbidding war.

3. Aiming to bring into effect its policy of peace, the Soviet Government, besides its systematically standing for the cause of disarmament, had also addressed the other governments, long before the idea of the covenant recently signed in Paris had come out, with the proposition to renounce through bilateral covenants not only the wars referred to in the covenant of Paris but any mutual aggression and any armed conflict whatsoever. Certain States such as Germany, Turkey, Afghanistan, Persia and Lithuania accepted the proposition and concluded with the Soviet Government appropriate covenants. Other governments allowed the proposition and refrained from answering it, and again others rejected it on the peculiar ground that the fact of unreservedly renouncing aggression would be incompatible with their obligations to the League of Nations. That, however, did not prevent those same Powers from signing the Paris covenant without mentioning in the wording of the covenant the sacredness of the above mentioned obligations.

4. The facts hereinabove stated afford unquestionable proof that the idea of removing wars and armed conflicts from the fields of international policy is the predominant idea of the foreign policy of the Soviet. Nevertheless, the originators of the covenant of Paris did not see fit to ask the Soviet Government either to join in the *pourparlers* which took place before the covenant or the framing of the text of that covenant. Likewise, no invitation was sent to the Powers that are sincerely interested in the maintenance of peace because either in the past (Turkey and Afghanistan) or in the present (the Republic of the great Chinese people) they have been or are attacked. The invitation to adhere to the covenant transmitted by the French Government likewise fails to contain conditions which would make it possible for the Soviet Government to exercise any influence on the very language of the instrument signed in Paris. Yet, the Soviet Government lays down as a foundation the axiom that under no condition whatsoever can it be deprived

of the right which has accrued or may hereafter accrue to the governments that have signed the covenant, and standing on that right the Soviet Government must in particular first offer several remarks concerning its attitude towards the covenant.

5. First of all the Soviet Government can not refrain from expressing its most profound regret that there is not in the covenant of Paris any obligation whatsoever having to do with disarmament. The Soviet delegation to the Preparatory Commission of the Disarmament Conference already has had the opportunity to declare that it is only by joining a covenant forbidding war with the carrying into effect of the total or general disarmament that success could be achieved in effectively guaranteeing the maintenance of universal peace and that, on the contrary, an international treaty forbidding war, but not accompanied by even that elementary guarantee offered by the limitation of armaments that are continuously progressing, would be a dead letter without any actual scope. The public declarations recently made by certain signatories of the Paris covenant concerning the unavoidable continuance of armament even after the pact is concluded are truly a confirmation of the foregoing. The new political international groups which have arisen in the meanwhile with especial regard to the question of naval armament have added force to this theory. That is the reason why the present situation makes it more than ever imperative to take decided measures in the field of disarmament.

6. In considering the language of the covenant the Soviet Government deems it necessary to point to the lack of plainness and clearness in Article I of the very formula that forbids war, which is open to divergent and arbitrary interpretations. For its part, the Soviet Government believes that any international war must be forbidden either as an instrument of what is styled "national policy" or as a means to promote other ends (for instance, the repression of movements for the freeing of peoples, etc.). According to the Soviet Government wars must be forbidden not only in the judicial and formal construction of the word (that is to say, supposing the "declaration of war," etc.) but also military actions such as, for instance, interference, blockade, military occupation of foreign territories, of foreign ports, etc. The history of these last few years knows of quite a number of military actions of that kind which have brought upon peoples awful calamities. The

Soviet Republics themselves have been attacked in that way and at the present time the huge Chinese people are suffering such attacks. There is more, military actions of that kind very often grow to the size of great wars which it becomes completely impossible to stop, and yet, the covenant does not in any way mention those questions that are so grave from the standpoint of peace. Again, the same Article 1 of the covenant deals with the necessity of solving all arguments and all international disputes by means that are exclusively pacific. Working on that theory the Soviet Government believes that there should also be put among the non-pacific means that are forbidden by the covenant such means as a refusal to resume normal pacific relations between nations or breaking such relations, for acts of that character by setting aside the pacific means which might decide differences, aggravate relations and contribute in creating an atmosphere that is conducive to the unleashing of wars.

7. Among the restrictions made in writing at the time of the diplomatic pourparlers among the original signatories of the covenant the Soviet Government paid particular attention to the reservation of the British Government in paragraph 10 of its note of May 19 of this year. The British Government there reserves to itself absolute freedom of action as towards several regions which it does not especially enumerate. If they are regions forming part of the British Empire or its dominions they are already all of them included in the covenant and the case of any aggression against them is provided for in the covenant so that the reservation of the British Government in their respect might seem to be at least superfluous. But if other regions are concerned the signatories of the covenant have a right exactly to know where the freedom of action of the British Government begins and where it ends.

But the British Government reserves to itself full freedom of action not only in cases of armed aggression against those regions but even in cases of any act whatsoever of enmity or "of immixion" which would justify the British Government in opening hostilities. Recognition of such a right for that Government would come to justifying war and might be taken as a contagious example by other signatories of the covenant who by reason of equal rights would also take upon themselves the same liberty with regard to other regions and the result would be that there would probably be no place left on the

earthly globe where the covenant could be put in operation. Indeed, the restriction made by the British Government carries an invitation to another signatory of the covenant to withdraw from its operation still other regions. The Soviet Government is unable to regard this reservation as anything but an attempt to use the covenant itself as an instrument of imperialistic policy. But the said note of the British Government is not communicated to the Soviet Government as forming a constituting part of the covenant or an annex thereto, so it can not be regarded as binding on the Soviet Government, no more than the other restrictions concerning the covenant that are mentioned in the diplomatic correspondence of the original signatories can be binding on the Soviet Government. Neither can the Soviet Government agree to all of the restrictions that justify war and particularly the restrictions made in the said correspondence to withdraw from the operation of the covenant decisions flowing from the by-laws of the League of Nations and the Locarno Agreements.

8. Summing up the foregoing, I have still to note the absence from the covenant of obligations concerning disarmament which stands as the one essential element by which peace can be guaranteed; the inadequacy and uncertainty of the very formula about the inhibition of war and finally the existence of several restrictions aimed to cast aside any appearance of a promise for the cause of peace. Yet, in so far as the Paris covenant lays upon Powers certain obligations as to public opinion and affords the Soviet Government another opportunity to bring before all those who are parties to the covenant the most important question for the cause of peace, that of disarmament, the solution of which is still the one guarantee which can ward off war, the Soviet Government expresses its consent to adhere to the covenant of Paris.

In accordance with the foregoing, I shall, Mr. Ambassador, shortly have the honor to forward to you the instrument of adherence of my Government as soon as the formalities going with it shall have been accomplished.

I take this opportunity to renew to you, Mr. Ambassador, the assurances of my high consideration.

M. LITVINOFF,
Acting Commissar of the
People for Foreign Affairs.

**Addresses of the Honorable Frank B. Kellogg,
Secretary of State**

*The War-Prevention Policy of the United States*¹

MR. CHAIRMAN: It has been my privilege during the past few months to conduct on behalf of the Government of the United States negotiations having for their object the promotion of the great ideal of world peace. Popular and governmental interest in the realization of this ideal has never been greater than at the present time. Ever since the World War, which spelled death to so many millions of men, spread desolation over so much of the Continent of Europe and shocked and imperiled neutral as well as belligerent nations, the minds of statesmen and of their peoples have been more and more concerned with plans for preventing the recurrence of such a calamity. Not only has the League of Nations been preoccupied with studies of security and world peace, but members of the League of Nations have concluded additional special treaties like those signed at Locarno in 1925, and recently at Habana the United States and 20 other American States, including 17 members of the League of Nations, expressed by formal declaration their unqualified condemnation of war as an instrument of national policy, and agreed to call a conference to draft appropriate treaties of compulsory arbitration.

The Government of the United States will never be a laggard in any effective movement for the advancement of world peace, and the negotiations which I have recently been carrying on have grown out of this Government's earnest desire to promote that ideal. They have had a dual character, having been concerned in part with the framing of new arbitration treaties to replace the so-called Root treaties, several of which expire by limitation this year, and in part with the antiwar treaty which M. Briand proposed to me last summer. I welcome the opportunity which you have afforded me to express before this audience my views on these questions and to explain the objects and aims of the Government of the United States with respect thereto.

In the first place it should be clearly understood that the treaty of arbitration which was signed last month with France

¹ Address delivered before the Council on Foreign Relations, at New York City, March 15, 1928.

has no relation whatsoever to the proposal submitted by M. Briand for a treaty declaring against war and renouncing it as an instrument of national policy. It is true that the preamble to the arbitration treaty recites that France and the United States are "eager by their example not only to demonstrate their condemnation of war as an instrument of national policy in their mutual relations, but also to hasten the time when the perfection of international arrangements for the pacific settlement of international disputes shall have eliminated forever the possibility of war among any of the powers of the world," but a preamble is not a binding part of a treaty. If war is to be abolished it must be through the conclusion of a specific treaty solemnly binding the parties not to resort to war with one another. It cannot be abolished by a mere declaration in the preamble of a treaty. Even though without legal effect, however, a formal expression of the peaceful aspirations of the Governments and their common desire to perfect a mechanism for the pacific settlement of justiciable disputes, such as that found in the preamble of the arbitration treaty, is, I believe, very helpful since it publicly defines the positions of the two Governments in a matter the importance of which is hard to exaggerate.

The arbitration treaty itself I regard as a distinct advance over any of its predecessors, and I hope it can serve as a model for use in negotiations with other governments with which we have no present arbitration treaty or where the existing Root treaties shortly expire. I have already instituted negotiations with the British, German, Italian, Japanese, Norwegian, and Spanish Governments on the basis of the draft treaty which I submitted to France last December, and I have indicated to all inquiring governments that I shall be pleased to conclude with them new treaties similar to that recently signed with France. If a comprehensive series of such bilateral treaties can be put into effect between the United States and the other nations of the world, I feel that a very effective mechanism for the pacific settlement of justiciable disputes will have been established. I attach such importance to the treaty just concluded with France that I shall discuss its provisions briefly before proceeding to a discussion of the correspondence which has been exchanged with France on the subject of the so-called Briand proposal.

Article 1 of the new arbitration treaty contains the language

of the first paragraph of the first article of the Bryan treaty of 1914 providing for investigation and report by a permanent international commission of all disputes not settled by diplomacy or submitted to arbitration. My purpose in including this reference to the Bryan treaty was to recognize anew the efficacy of the procedure established under the Bryan treaties and to unite by reference in one document the related processes of conciliation and arbitration. The force and effect of the Bryan treaty with France has in no sense been impaired by the new treaty, nor was it intended that it should be. This is the understanding of both Governments and notes to that effect have been exchanged. So far as the legal effect of the new treaty is concerned, Article 1 could be left out entirely and mention of the Bryan treaty made only in Article 2 where there is reference to the conciliation procedure under that treaty.

Article 2 provides that—

All differences relating to international matters in which the high contracting parties are concerned by virtue of a claim of right made by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy, which have not been adjusted as a result of reference to the above-mentioned Permanent International Commission, and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity, shall be submitted to the Permanent Court of Arbitration established at The Hague by the convention of October 18, 1907, or to some other competent tribunal, as shall be decided in each case by special agreement, which special agreement shall provide for the organization of such tribunal if necessary, define its powers, state the question or questions at issue, and settle the terms of reference.

It also contains a clause providing that the special agreement must in each case be ratified with the advice and consent of the Senate. This is the usual practice in the United States and I do not know of a single case where the Senate has refused to consent to any special agreement of arbitration.

Article 3 excludes from arbitration under the treaty disputes the subject matter of which is within the domestic jurisdiction of either of the parties, involves the interests of third parties,

depends upon or involves the maintenance of the Monroe Doctrine, and depends upon or involves the observance of the obligations of France under the Covenant of the League of Nations. It is difficult for me to see by what claim of right any government could properly request arbitration of disputes covered by these exceptions since few, if any, would present questions justiciable in their nature. As a practical matter, therefore, I do not feel that the general applicability of the new treaty is materially restricted by the four clauses of exclusion. The Root treaty which it supersedes contained a clause excluding from its scope questions affecting "the vital interests, the independence or the honor" of the contracting states. This clause was borrowed from an Anglo-French arbitration treaty of 1903 and represented the reservations generally regarded as necessary 25 years ago. Arbitration has repeatedly proved its worth since then, and inasmuch as such vague and all-inclusive exceptions can be construed to cover almost any substantial international dispute and might well operate to defeat the very purpose of an arbitration treaty, I decided to eliminate them and to specify with particularity the questions excluded from arbitration. In this respect the new treaty is a much more satisfactory and practical instrument for the adjustment of justiciable international controversies, and it is only justiciable questions that are susceptible to arbitration.

I do not agree with the pronouncement of many organizations and publicists engaged in the discussion of international arbitration to the effect that every question between nations should be arbitrated. This is a very simple and all-inclusive formula but it will not stand the test of careful examination, and never has and never can be universally adopted. Let us consider for a moment what questions are susceptible of arbitration and can be submitted by nations to the decision of an international court. They are exactly the same kind of questions as can be arbitrated between citizens of the United States or submitted to the decision of a local court under our form of government; that is to say, they are questions arising under contract or under the law of the land. Applying this analogy in international relations, we find that the questions which are susceptible of arbitration or impartial decision are those involving rights claimed under a treaty or under international law. A political question cannot be arbitrated because there are no principles of law by which it can be decided, and unless there are rele-

vant treaty provisions requiring construction, no nation can agree to arbitrate purely domestic questions like tariff, taxation, immigration, and, it may be said, all political questions involving the exercise of sovereignty within the nation's territorial limits. There are no positive rules of international law applicable to such questions to guide arbitrators in reaching a decision.

I am confident that the enthusiastic supporters of the theory that all questions between nations should be submitted to arbitration have not realized the vital difference between justiciable and political questions. Take, for example, the question of immigration which at times arouses bitter feelings between nations. On what principle could a government arbitrate this question, and what rules could be applied to guarantee justice to the disputants? It seems to me we must realize that so long as the world is composed of separate, sovereign nations, only those questions can properly be submitted to arbitration which, being justiciable in their nature, are susceptible of determination by the application of recognized rules of law or equity. Non-justiciable or political questions must, if they threaten to bring on hostilities, be adjusted through other means, such as conciliation, where a disinterested effort is made to reconcile conflicting points of view without finding necessarily that either party was in the wrong.

It is when arbitration cannot or will not be invoked by the parties that conciliation treaties have their greatest value for adjusting international irritations tending to inflame public opinion and imperil the peace of the world. One of the first of our treaties establishing a procedure for conciliation was the so-called Knox treaty of 1911. That treaty, which was also a treaty of arbitration, was never proclaimed by the President because of certain reservations attached by the Senate in advising and consenting thereto. These reservations, however, did not affect the conciliation provisions of the treaty and need not be discussed in this connection. Our next conciliation treaties were the Bryan treaties to which I have already referred. The first of these was signed in 1913 and there are 18 of them now in force. In 1923 we became parties to two other conciliation treaties, namely, that signed at Washington on February 7, 1923, between the United States and the five Central American Republics, and that signed at Santiago on May 3, 1923, between the United States and 15 Latin Ameri-

can countries. Both of these treaties have been ratified by the United States. They are similar to the Bryan treaties, the principal point of difference being as to the manner of constituting the commissions of inquiry.

The Bryan treaties provide, you will recall, that any dispute shall, when ordinary diplomatic proceedings have failed and the parties do not have recourse to arbitration, be submitted for investigation and report to a Permanent International Commission composed of five members, two of whom, a national and a non-national, being designated by each of the two Governments, and the fifth member by agreement. The commission is bound to report within a year from the date on which it takes jurisdiction of the case, and the parties agree not to resort to any act of force prior to the commission's report, reserving, however, full liberty of action with respect to the report itself.

The United States has been a party to conciliation treaties for 15 years, and while there has never yet been an occasion for invoking them, I know of no reason why this country should object to an inquiry by a commission of conciliation if war is threatened. It is claimed in some quarters that purely domestic questions might be inquired into by these commissions of conciliation. While I cannot conceive that any government would feel justified in demanding an inquiry by the commission into a matter solely within the domestic jurisdiction of another government, I do not feel that the point is material. The object which is sought to be attained by conciliation treaties is the prevention of war, and in my opinion any government can well afford to submit to inquiry any question which may threaten to involve it in the horrors of war, particularly when, as in the Bryan and other treaties I have just mentioned, the findings of the commission have no binding force and to be effective must be voluntarily accepted.

The world is more and more alive to the necessity of preventing war, and I think it is significant that the Sixth International Conference of American States which recently concluded its labors at Habana adopted two antiwar resolutions one of which contains the unqualified statement that "the American Republics desire to express that they condemn war as an instrument of national policy in their mutual relations," which, it is interesting to note, is the language of M. Briand's original proposal to me. The other resolution contains the

statement that "war of aggression constitutes an international crime against the human species" and the declaration that "all aggression is considered illicit and as such is declared prohibited." It is the former resolution that I regard as of the greatest interest at this time because, of the 21 states represented at the Habana Conference, 17, while members of the League of Nations, were not prevented by such membership from joining in an unqualified declaration against war. This general resolution is also important because it endorses the principle of compulsory arbitration for justiciable disputes and provides for the calling of a conference in Washington within a year to draft appropriate treaties of arbitration and conciliation.

I have discussed at some length the provisions of the new arbitration treaty with France. I have also outlined the scope and purpose of the many conciliation treaties which the United States has concluded with other governments. I know of but one other form of treaty which can be concluded for the purpose of preventing war and that is a treaty in which the parties specifically bind themselves not to resort to war. It is this kind of treaty which people have in mind when they discuss treaties for outlawing war, and it is a novel idea in modern international relations.

As you are all aware, in a communication dated June 20, 1927, M. Briand proposed to the United States the conclusion of a bilateral treaty under the terms of which France and the United States would agree to renounce war as an instrument of their national policy towards each other. This treaty provided, first, that—

The high contracting powers solemnly declare, in the name of the French people and the people of the United States of America, that they condemn recourse to war and renounce it respectively as an instrument of their national policy towards each other.

and, secondly, that—

The settlement or the solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise between France and the United States of America, shall never be sought by either side except by pacific means.

This important and inspiring proposal was carefully and sympathetically studied by the Government of the United States. While we might well have hesitated to take the initiative in proposing such a treaty to Europe, the invitation from France afforded us an opportunity to examine anew the whole question of world peace and determine in what practical manner we could best cooperate. We made that examination, and, in my note of December 28, 1927, after expressing the sincere appreciation of the United States for the offer which France had so impressively submitted, I warmly seconded M. Briand's proposition that war be formally renounced as an instrument of national policy, but suggested that instead of giving effect thereto in a bilateral treaty between France and the United States, an equivalent multilateral treaty be concluded among the principal powers of the world, open to adherence by any and all nations, thus extending throughout the world the benefits of a covenant originally suggested as between France and the United States alone. The powers which I suggested be invited in the first instance to join with France and the United States in such a treaty were Great Britain, Germany, Italy, and Japan.

France, I am happy to say, promptly agreed in principle to the idea of a multilateral treaty. France suggested, however, that the treaty provide only for the renunciation of wars of aggression, explaining that while France could conclude a bilateral treaty with the United States providing for the unqualified renunciation of war, the conclusion of a similar multilateral treaty presented certain difficulties in view of the obligations of France under the Covenant of the League of Nations, treaties such as those signed at Locarno in October 1925 and other international conventions relating to guaranties of neutrality. The French Government also pointed out that in September 1927 the members of the League of Nations adopted a resolution condemning aggressive war as an international crime. In these circumstances France expressed the opinion that the common object of the two Governments could best be attained by framing the proposed antiwar treaty so as to cover wars of aggression only. I have not been able to agree to that reservation.

My objection to limiting the scope of an antiwar treaty to mere wars of aggression is based partly upon a very real disinclination to see the ideal of world peace qualified in any way,

and partly upon the absence of any satisfactory definition of the word "aggressor" or the phrase "wars of aggression." It is difficult for me to see how a definition could be agreed upon which would not be open to abuse. The danger inherent in any definition is recognized by the British Government which in a memorandum recently submitted to the Subcommittee on Security of the Preparatory Committee on Disarmament of the League of Nations discussed attempted definitions of this character, and quoted from a speech by the British Foreign Secretary in which Sir Austen said:

I therefore remain opposed to this attempt to define the aggressor because I believe that it will be a trap for the innocent and a signpost for the guilty.

I agree with Sir Austen on this point.

It seems to me that any attempt to define the word "aggressor" and by exceptions and qualifications to stipulate when nations are justified in going to war with one another, would greatly weaken the effect of any treaty such as that under consideration and virtually destroy its positive value as a guaranty of peace. And in my last note to the French Government I stated expressly that I could not avoid the feeling that if governments should publicly acknowledge that they could only deal with this ideal of world peace in a technical spirit and must insist upon the adoption of reservations impairing if not utterly destroying the true significance of their common endeavors, they would be in effect only recording their impotence to the keen disappointment of mankind in general.

In my note of February 27, 1928, I also discussed at some length the question raised by the Government of France whether, as a member of the League of Nations and as a party to the treaties of Locarno and other treaties guaranteeing neutrality, France could agree with the United States and the other principal world powers not to resort to war in their mutual relations without *ipso facto* violating their present obligations under those treaties. I pointed out that if those obligations could be interpreted so as to permit France to conclude with the United States alone a treaty such as that proposed by M. Briand, it was not unreasonable to suppose that they could be interpreted with equal justice so as to permit France to join with the United States in offering to conclude an equiva-

lent multilateral treaty with the other principal powers of the world. I stated that it seemed to me that the difference between the bilateral and multilateral form of treaty having for its object the unqualified renunciation of war, was one of degree and not of substance, and that a government able to conclude such a bilateral treaty should be no less able to become a party to an identical multilateral treaty, since it could hardly be presumed that members of the League of Nations were in a position to do separately something that they could not do together.

In these circumstances I expressed the earnest hope that France, which admittedly perceives no bar to the conclusion of an unqualified antiwar treaty with the United States alone, would be able to satisfy itself that an equivalent treaty among the principal world powers would be equally consistent with membership in the League of Nations, adding that if members of the League of Nations could not, without violating the terms of the Covenant, agree among themselves and with the United States to renounce war as an instrument of their national policy, it seemed idle to discuss either bilateral or multilateral treaties unreservedly renouncing war. In that connection I called attention to the fact that the 21 American States represented at the recent Habana Conference adopted a resolution unqualifiedly condemning war as an instrument of national policy in their mutual relations, and to the fact that 17 of the 21 States represented at that Conference are members of the League of Nations.

I concluded my note with the unequivocal statement that the Government of the United States desires to see the institution of war abolished and stands ready to conclude with the French, British, Italian, German, and Japanese Governments a single multilateral treaty open to subsequent adherence by any and all other governments binding the parties thereto not to resort to war with one another. This is the position of the Government of the United States, and this is the object which we are seeking to attain.

I cannot believe that such a treaty would violate the terms of the League Covenant or conflict necessarily with the obligations of the members of the League. Even Article 10 of the Covenant has been construed to mean that League members are not inescapably bound thereby to employ their military forces. According to a recent statement by the British Gov-

ernment, many members of the League accept as the proper interpretation of Article 10 a resolution submitted to the Fourth Assembly but not formally adopted owing to one adverse vote. That resolution stated explicitly.

It is for the constitutional authorities of each member to decide, in reference to the obligation of preserving the independence and the integrity of the territory of members, in what degree the member is bound to assure the execution of this obligation by employment of its military forces.

I earnestly hope, therefore, that the present negotiations looking to the conclusion of an unqualified multilateral anti-war treaty may ultimately achieve success, and I have no doubt that if the principal powers of the world are united in a sincere desire to consummate such a treaty, a formula can be devised which will be acceptable to them all. Since, however, the purpose of the United States is so far as possible to eliminate war as a factor in international relations, I cannot state too emphatically that it will not become a party to any agreement which directly or indirectly, expressly or by implication, is a military alliance. The United States cannot obligate itself in advance to use its armed forces against any other nation of the world. It does not believe that the peace of the world or of Europe depends upon or can be assured by treaties of military alliance, the futility of which as guarantors of peace is repeatedly demonstrated in the pages of history.

Mr. Chairman, I must not claim that treaties of arbitration and conciliation, or even treaties explicitly renouncing war as an instrument of national policy, afford a certain guaranty against those conflicts between nations which have periodically broken out since the dawn of world history. In addition to treaties there must be an aroused public conscience against the utter horror and frightfulness of war. The peoples of the world must enjoy a peaceful mind, as it has been said, and treaties such as those I have discussed this evening, and the efforts of statesmen to advance the cause of world peace, can only be regarded as a portion of the problem. I am not so blind as to believe that the millennium has arrived, but I do believe that the world is making great strides toward the pacific adjustment of international disputes and that the common people are of one mind in their desire to see the abolition of war as an institution. Certainly the United States should

not be backward in promoting this new movement for world peace, and both personally and officially as Secretary of State, I shall always support and advocate the conclusion of appropriate treaties for arbitration, for conciliation, and for the renunciation of war.

*The French Draft of the Multilateral Treaty for the Renunciation of War*¹

MR. PRESIDENT, MR. AMBASSADOR, LADIES AND GENTLEMEN: . . .

Last year M. Briand made a great proposition to the United States, and M. Briand, the French Ambassador and I are now trying to negotiate a multilateral treaty denouncing war and agreeing not to resort to it for the settlement of international disputes. I wish to pay my sincere tribute to the great ideals and the high-mindedness and patriotism of M. Briand in his work for peace. I also want to pay tribute to the Ambassador who has so loyally cooperated with him. We have different views, to be sure, and if you will bear with me for a few moments I would like to outline the present situation.

There seem to be six major considerations which the French Government has emphasized in its correspondence and in its draft treaty; namely, that the treaty must not (1) impair the right of legitimate self-defense; (2) violate the Covenant of the League of Nations; (3) violate the treaties of Locarno; (4) violate certain unspecified treaties guaranteeing neutrality; (5) bind the parties in respect of a state breaking the treaty; (6) come into effect until accepted by all or substantially all of the powers of the world. The views of the United States on these six points are as follows:

[For the remainder of the excerpt, see Document 23.]

*Negotiations for the Conclusion of a Treaty for the Renunciation of War*²

MR. CHAIRMAN: . . . It is known to all of you that in June 1927 M. Briand, the French Minister of Foreign Affairs, made

¹ Excerpt from an address delivered before the American Society of International Law, Washington, April 28, 1928.

² Excerpt from an address delivered at the banquet in connection with the tercentenary commemoration of the founding of the First Reformed Dutch Church in 1628 on the Island of Manhattan, at New York City, June 11, 1928.

an historic proposal to the United States. He suggested that our two countries conclude a treaty condemning war and renouncing it as an instrument of national policy in their mutual relations. That proposal was carefully considered by the United States, and the more it was examined, the more we were convinced that to realize its greatest usefulness M. Briand's inspiring idea should be enlarged so as to make it possible to bring within the scope of such a treaty not only France and the United States, but also all the other nations of the world. The French Government was informed of our views and for several months we exchanged notes with France on this general subject. Finally on April 13, 1928, the United States with the full approval of France transmitted for the consideration of the British, German, Italian, and Japanese Governments the texts of the diplomatic notes previously exchanged by the two Governments. At the same time the United States submitted to those Governments on its own initiative a preliminary draft of a treaty for the renunciation of war, representing in a general way the form of treaty which it was prepared to sign. The four Governments addressed were asked whether they were in a position to conclude such a treaty.

Encouraging replies have now been received from them all. They have all expressed cordial approval of the principle underlying the proposal of the United States, and have indicated a sincere desire to collaborate in the conclusion of an appropriate treaty for the renunciation of war. The British Government, in addition to informing the United States that it found it had no commitments which would prevent signing a treaty such as we suggested, indicated that the Dominion Governments and the Government of India would be glad to become original signatories of the treaty, and appropriate invitations were thereupon sent to the Governments of Canada, the Irish Free State, South Africa, Australia, New Zealand, and the Government of India. The replies which we have received demonstrate that the several governments heartily endorse the plan and are ready and willing to join in the negotiation of a treaty such as that proposed by the United States. Other governments have also informally indicated their desire to participate in a treaty for the renunciation of war and I earnestly hope that we shall soon succeed in reaching an agreement as to the precise text to be employed. The force of

public opinion in this country and abroad has already made itself felt. The peoples of the world seem unquestionably to want their governments to renounce war in the most effective way possible.

The antiwar treaty which the United States has proposed, and which as I have said has its origin in the suggestions made by M. Briand a year ago, is simple and straightforward. That grand conception of the French Foreign Secretary undoubtedly had its inspiration in the deep-seated desire of the French people, as well as all the people of Europe, to avoid another great cataclysm of war. It is significant that Europe since the Great War has been engaged in efforts of various kinds to assuage national and racial animosities, to settle international disputes, and to prevent war. What I believe, and I am convinced that the leaders of the governments believe, is that there should be one more step in this effort, and that is, a simple declaration against war as an institution for the settlement of international controversies. Since this discussion commenced between France and the United States, the idea has appealed with increasing force to the public opinion of the world. As one looks back over the history of the four years of that unparalleled carnage, which left its trail of desolation and death, one cannot believe that the nations will hesitate to commit themselves in the most unqualified and solemn terms to the renunciation of recourse to war.

There are, of course, cynical individuals who decry all efforts to lessen the likelihood of war and belittle in particular the present negotiations. There are others who believe in war as an institution and whose support, if any, will be cold and grudging. But I am convinced that those of us who believe wholeheartedly in this movement are no less realistic. We know that the peoples of the world desire peace and dread any new international conflict. We know that the peoples of the world are becoming more and more articulate and that governments are becoming more and more responsive to their wishes. We now find peoples and governments united in a common and sincere desire to prevent so far as possible the outbreak of any war anywhere and seriously considering the best form of multilateral treaty to give effect to their aspirations. It is a most impressive manifestation of the spiritual nature of man.

With the passage of time the emphasis in our present negotia-

tions is being placed not on narrow technical considerations of a legalistic nature, but on the broad principles underlying the entire idea. It is peace, not war, that we are seeking to perpetuate and I am firmly convinced that the simple, straightforward, unequivocal declaration against war which the United States borrowed from M. Briand and incorporated in its draft treaty is the one that has the greatest moral value and the one that will in the long run commend itself to all the peoples concerned. It has no hidden meaning. It is easily understood. The interpretation placed upon it by the United States has been publicly stated in the address which it was my privilege to deliver a few weeks ago before the American Society of International Law. The accuracy of this interpretation has been contested by no government. On the contrary, many governments have indicated that they agree with the conclusions set forth in that address. In these circumstances is it too much to hope that all may find themselves in the near future able to sign with the United States a treaty under which we all declare in the names of our respective peoples that we condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in our relations with one another, and agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among us, shall never be sought except by pacific means? I do not think that it is too much to hope that such a treaty will be signed.

I am persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made, to the end that the peaceful and friendly relations now existing between the peoples of the world may be perpetuated. I am convinced, moreover, that all changes in these relations should be sought only by pacific means and be the result of a peaceful and orderly process; and any nation which shall hereafter seek to promote its national interests by resort to war should be denied the benefits and guaranties furnished by the proposed treaty. This is the object of the negotiations in which fifteen world powers are now engaged, and in the name of the Government of the United States I bespeak the continued support of this and every other church in the present movement for the promotion of world peace.

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